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DISSERTATION

Taught Master Programme *Intelligence and Strategic Studies*

THE EU'S INTELLIGENCE SYSTEM AND ITS OVERSIGHT AND DEMOCRATIC ACCOUNTABILITY

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This work is being submitted in partial fulfillment of the requirements for the degree *MSc(Econ) in Intelligence and Strategic Studies*.

Abstract

This research aims to answer two questions: firstly, whether the EU itself does or does not possess intelligence capabilities, and secondly, if so, whether they are subject to sufficient parliamentary oversight.

To answer the first question, the term 'intelligence' is defined as referring to security-related information, tailored to the specific needs of a decision-maker. Hence, in this work, formal EU bodies engaging in the production of intelligence via the intelligence activities of collection, processing, analysis, and dissemination qualify as 'EU intelligence body'. Thereby, intelligence collection is argued to be performed even if the body does not engage in the collection of secret information using special powers.

This definition is used to argue that currently, five EU bodies qualify as intelligence bodies: the CFSP's Satellite Centre, the Military Staff's Intelligence Directorate and the Intelligence Analysis Division, and the AFSJ's Europol and Frontex. As they increasingly form a unit, it is concluded that the EU indeed possesses an emerging intelligence system.

On this basis, the parliamentary oversight of the EU intelligence bodies is assessed. Based on the definition of intelligence oversight and democratic accountability elaborated in this work, the European Parliament's and the Member States' parliaments' capabilities to effectively oversee the EU intelligence bodies are examined. Particular attention is paid to the parliaments' resources and access to classified information, their influence on the intelligence bodies' mandates and budgets, and their oversight of the bodies' activities.

Thereby, several flaws are identified that hamper the parliaments' oversight. In particular, the CFSP intelligence bodies are found to be *de facto* accountable neither to national parliaments, nor the European Parliament. Thus, the EU currently does not live up to its own democratic values with regard to democratic accountability. Hence, it is concluded that the parliamentary oversight of the EU intelligence system needs to be improved.

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List of abbreviations

AFET	Committee on Foreign Affairs of the European Parliament
AFSJ	Area of Freedom, Security and Justice
AWFs	Analytical Work files, one of the two databases of Europol
CFSP	Common Foreign and Security Policy of the European Union
CMPD	Crisis Management and Planning Directorate, division within the EEAS
Council	Council of the European Union
CSDP	Common Security and Defence Policy (sub-unit of the CFSP)
CTG	Counter Terrorism Group
DROI	Subcommittee on Human Rights of the European Union, subcommittee to AFET
ECHR	European Convention on Human Rights, effective since 1953
ECJ	Court of Justice of the European Union
ECtHR	European Court of Human Rights
EEAS	European External Action Service, 'foreign ministry' of the EU
EIS	Europol Information System, one of the two databases of Europol
EP	European Parliament
EU	European Union
EUFOR	European Union Force, a rapid reaction force operated by the EU
EUMC	EU Military Committee
EUMS	EU Military Staff
FRAN	Frontex Risk Analysis Network, Frontex's information network linking EU bodies with the Member States' national intelligence agencies
High Representative	High Representative of the Union for Foreign Affairs and Security Policy
IntCen	European Union Intelligence Analysis Centre (former Situation Centre)
IntDir	Intelligence Directorate of the EU Military Staff
JSB	Joint Supervisory Body of Europol, supervises its use of personnel data
LIBE	Committee on Civil Liberties, Justice and Home Affairs of the European Parliament

NATO	North Atlantic Treaty Organisation
NPs	National Parliaments of the EU Member States
OCTA	European Organised Crime Threat Assessment, intelligence product of Europol
PSC	Political and Security Committee
SatCen	European Union Satellite Centre
SEDE	Subcommittee on Security and Defence of the European Parliament, subcommittee to AFET
SIAC	Single Intelligence Analysis Capacity, agreement of IntDir and IntCen to produce joint intelligence analyses, in force since 2007
SitCen	European Union Joint Situation Centre (now Intelligence Analysis Centre)
TESAT	EU Terrorism Situation and Trend Report, intelligence product of Europol
UN / UNO	United Nations Organization
WEU	Western European Union (international organization, 1948 –2011)

1 Introduction

"[N]either the SitCen, nor any other component of the EEAS [European External Action Service], is an 'intelligence service'. The High Representative has no intention to establish an 'intelligence service' as part of the EEAS".¹ With these words, the European Commission answered the question of a Member of the European Parliament, *de facto* denying that the European Union (EU) itself has intelligence capabilities comparable to those at the national level. Accordingly, the official position of for example SitCen's Director is that there is also no need for further parliamentary control of those capabilities in particular.² Yet, only two months later, the headline of an article on the website *EU Observer* read "French national to head EU intelligence centre".³

This apparent contradiction leads to the interesting question of whether or not the European Union itself possesses independent intelligence capabilities and, accordingly, whether there is indeed no need for improving their parliamentary control. It is not simple to find the answer to this question in the literature: while there is quite some information available on intelligence and intelligence accountability in general, only a relatively limited amount of scientific articles focus on the intelligence capabilities of the European Union or their oversight. Of those articles, the majority were written between 2006 and 2009, and thus before the Lisbon Treaty, which led to some changes in the EU's intelligence realm, came into force.⁴ Therefore, this work aims to fill this gap in the literature by outlining the EU's current intelligence capabilities and the existing parliamentary oversight provisions.

¹ **COUNCIL OF THE EUROPEAN UNION** (2010d): 'EU Observer article of 22 February 2010'. Answer to written question E-1131/10 put by Martin Ehrenhauser, Brussels, 3 May 2010.

² **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011.

³ **MAHONY**, Honor (2010): 'French national to head EU intelligence centre' in *EU Observer*, 28 July 2010.

⁴ For example, see the articles of Hans **BORN**, Mai'a K. Davis **CROSS**, Claudia **HILLEBRAND**, Björn **MÜLLER-WILLE**, Jelle **VAN BUUREN**, James I. **WALSH**, Aidan **WILLS**.

Towards this aim, this work begins with defining the term 'intelligence'. The definition is then used to argue that five EU bodies currently engage in activities that amount to intelligence functions: the Intelligence Analysis Centre (IntCen), the EU Military Staff's Intelligence Directorate (IntDir), the EU Satellite Centre (SatCen), Europol and Frontex. After having described their tasks and activities, the second part of this work focuses on the question of the EU intelligence's parliamentary oversight and democratic accountability. Again, these terms are at first defined and good standards outlined. On this basis, the oversight practices of the European Parliament (EP) and the National Parliaments (NPs) currently in place are assessed for strengths and flaws, with particular focus on the EP's and NP's influence on the mandates and budget, as well as their ability to efficiently oversee the data protection regulations and ongoing activities of the identified intelligence bodies. As a result, the work draws a conclusion on whether the EU's intelligence bodies are indeed subject to sufficient parliamentary oversight.

However, even if there is an important scholarly debate thereon, it is not within the scope of this work to assess the effectiveness of the EU intelligence bodies or give recommendations on how to improve their performance, nor to discuss the overall need for EU intelligence capabilities that somewhat duplicate the existing NATO intelligence-sharing provisions.

2 What is 'intelligence'?

In the first part of this work, it shall be argued that the EU itself possesses intelligence capabilities as some EU bodies engage in intelligence activities. To do so, it is first necessary to define what is understood by 'intelligence'. However, as there is no universally-accepted definition of intelligence, one needs to be formulated for this work.⁵

⁵ In this work, the terms “policy-maker” and “decision-maker” are used synonymously.

In this work, 'intelligence' shall be used to designate "a subset of the broader category of information": thus, intelligence refers to any "information that is tailored to assist a certain receiver's decision-making."⁶ This means that good intelligence is timely, objective and clear in outlining what is known or assumed, focuses strictly on the specific information need of the policy-maker, and is presented in a digestible form that allows the policy-maker to easily grasp the information.⁷ However, what information specifically constitutes intelligence to a decision-maker depends on what decision he has to take.⁸ In this work, only security-related information shall be examined, which focuses either on *internal* threats like "extremism, terrorism, [or] organized crime", or on *external* threats emanating from foreign states or actors.⁹

From this understanding of intelligence as security-related information tailored to the needs of decision-makers results what qualifies in this work as an EU intelligence body: in general, this can be any governmental, i.e. formal, official, continually-standing EU body whose task is to produce intelligence by engaging in the so-called intelligence activities of collection, processing, analysis and dissemination. After the policy-makers have defined the topics on which the intelligence body is to issue intelligence, the first step for producing the latter consists of *intelligence collection*, that is, the gathering of raw data through different

⁶ **LOWENTHAL**, Mark (2009): *Intelligence – from secrecy to policy*. Fourth Edition, CQ Press, Washington, p.1; **MÜLLER-WILLE**, Björn (2008): 'The effect of international terrorism on EU intelligence co-operation' in: *Journal of Common Market Studies*, Vol. 46, No.1, p.52.

⁷ **LOWENTHAL** (2009): *Intelligence – from secrecy to policy*, p.1 and 147; **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.52; **ČRNČEC**, Damir (2009): 'A new intelligence paradigm and the European Union' in: *Journal of Criminal Justice and Security*, Vol.1, p.152; **WILLS**, Aidan (2011): *Guidebook: Understanding Intelligence Oversight*. Guidebook by the Geneva Centre for Democratic Control of Armed Forces DCAF, p.11; **SCHREIER**, Fred (2007): 'The need for efficient and legitimate intelligence' in: **BORN**, Hans and **MARINA CAPARINI** (Eds., 2007): *Democratic Control of Intelligence Services – Containing Rogue Elephants*. Ashgate Publishing Limited, Farnham, UK, p.26f; **Baldino**: 'Introduction: Watching the Watchman' in **BALDINO**, Daniel (Ed., 2010): *Democratic Oversight of Intelligence Services*. The Federation Press, Leichhardt, p.15.

⁸ **LOWENTHAL** (2009): *Intelligence – from secrecy to policy*, p.1; **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.52.

⁹ **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.31f.

means.¹⁰ This data is categorised according to its collection method: for example, SATINT refers to satellite imagery, HUMINT to human intelligence gathered by agents and spies, and OSINT to intelligence obtained from open sources.¹¹ In the second step, the data is *processed*, for example by translating HUMINT reports, by putting different information into context, or by verifying the reliability of a source.¹² Thirdly, the information is *analysed* and, by tailoring it to the policy-makers' needs, turned into intelligence: the significant facts are identified and conclusions drawn, patterns are identified, background information explained, and thereby, "the bits and pieces of information ... [are transformed] into something that is useable by policymakers."¹³ Finally, the resulting intelligence is *disseminated* to the decision-maker, that is, moved from the intelligence producer to the consumer.¹⁴ It may take the form of a warning, a situation report, a risk estimate, an analysis or an assessment relevant to the information need of the decision-maker, and will either focus on broader, general trends (a *strategic* intelligence product) or aims to support a particular operation or imminent threat situation (an *operational* intelligence product).¹⁵ In general, at least part of the intelligence products is not publicly accessible, but classified.

¹⁰ **LOWENTHAL** (2009): *Intelligence – from secrecy to policy*, p.55ff; **SHULSKY**, Abram N. (1991): *Silent Warfare – understanding the world of intelligence*. Brassey's (US) Inc., Washington, p.7.

¹¹ **TODD**, Paul and Jonathan **BLOCH** (2003): *Global Intelligence – The World's Secret Services today*. A Global Issues Title, Zed Books, London, p.37; **BRUNEAU**, Thomas C. and Steven C. **BORAZ** (2007): 'Introduction: Intelligence Reform: Balancing Democracy and Effectiveness' in **BRUNEAU**, Thomas C. and Steven C. **BORAZ** (Eds., 2007): *Reforming Intelligence. Obstacles to Democratic control and effectiveness*. University of Texas Press, Austin, p.8.

¹² **SHULSKY** (1991): *Silent Warfare*, p.37.

¹³ *Ibid*; **HERMAN**, Michael (1996): *Intelligence power in peace and war*. The Royal institute of international affairs, Cambridge University Press, Cambridge, p.100.

¹⁴ **LOWENTHAL** (2009): *Intelligence – from secrecy to policy*, p.62ff.

¹⁵ **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.31.

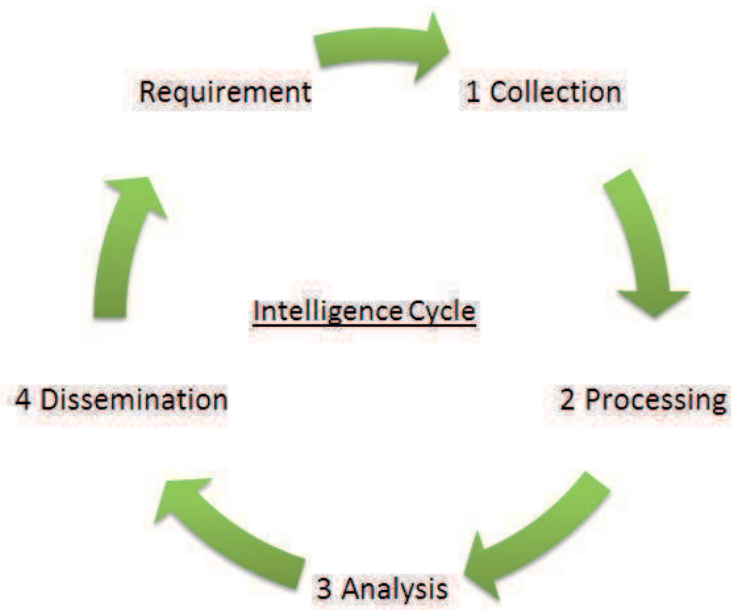


Figure 1: The Intelligence Cycle as presented by Lowenthal

In the past, many intelligence scholars required that, in order to qualify as an intelligence body, an institution had to engage in collecting *secret* information with so-called *special powers* means not available to other government agencies, like the interception of communications or the conduct of covert surveillance.¹⁶ As such secret information was not available from any other sources and could be obtained only by the intelligence agencies, the collection of secret information became the most important function of intelligence bodies and was accordingly seen by some scholars as their defining feature.¹⁷

However, this view shall not apply in this work as it is deemed outdated: with the information revolution of the last decades, security-related information that once had to be

¹⁶ **WILLS** (2011): *Guidebook: Understanding Intelligence Oversight*, p.18; **SHULSKY** (1991): *Silent Warfare*, p.1 and 3.

¹⁷ **WILLS**, Aidan, Mathias VERMEULEN, Hans BORN, Martin SCHEININ and Micha WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union'. Study requested by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, under the auspice of the Directorate-General for internal policies; Policy department C – citizens' rights and constitutional affairs. English version, PE 453.207, p.42, in analogy to Gill and Phythian; **HERMAN** (1996): *Intelligence power in peace and war*, p.119; **SHULSKY** (1991): *Silent Warfare*, 1 and 3.

collected using special powers means can nowadays be derived via the systematic processing of publicly accessible sources on the internet, in scientific publications, newspapers, NGO articles, or TV and radio broadcasts.¹⁸ Accordingly, open-source information is increasingly replacing secret information as the main basis for intelligence: "80 to 90 percent" of Western intelligence already stems from public sources, and the US "has recently invested huge sums in OSINT".¹⁹ Consequently, the more OSINT gains importance, the less special powers collection is needed in order to produce good intelligence. Instead, collection increasingly refers to selecting the important information from "the sheer superabundance" of OSINT.²⁰ Thus, as it is nowadays possible to produce good intelligence without the use of special collection means or secret information, an EU institution shall in this work qualify as intelligence body even if it uses exclusively OSINT to produce its intelligence products.²¹

3 The EU's intelligence bodies

The definition of intelligence elaborated above will be used in the next sections to argue that currently, five EU bodies qualify as intelligence bodies as they engage in intelligence activities. With their intelligence products, they support EU decision-making in the two security-related policy fields of the so-called *Common Foreign and Security Policy* (CFSP) and the *Area of Freedom, Security and Justice* (AFSJ).

¹⁸ **CROSS**, Mai'a K. Davis (2011): 'EU intelligence sharing & the Joint Situation Centre: a glass half-full'. Paper prepared for the Meeting of the European Union Studies Association, 3-5 March 2011, p.10; **HERMAN** (1996): *Intelligence power in peace and war*, p.101; **UNITED STATES ARMY** (2006): 'Open Source Intelligence'. Field Manual Interim No. 2-22.9, December 2006, expired December 2008. Headquarters, Department of the Army, Washington, 5 December 2006, Chapter 2, paragraphs 2-2, 2-5 and 2-6.

¹⁹ **RETTMAN**, Andrew (2011h): 'EU intelligence services opening up to collaboration' in *EU Observer*, 18 January 2011; **Dyèvre**, Axel (2008): 'Intelligence cooperation: The OSINT option'. Open Forum article for EUROPOLITICS, Defence Security, 28 October 2008.

²⁰ **COUNCIL OF THE EUROPEAN UNION** (2010a): 'European Open Source Intelligence Project'. Brussels, 27 April 2010, 9037/10. Council Presidency to Ad hoc Group on Information Exchange, p.5; **Dyèvre** (2008): 'Intelligence cooperation: The OSINT option'; **SHULSKY** (1991): *Silent Warfare*, p.2.

²¹ **WILLS** (2011): *Guidebook: Understanding Intelligence Oversight*, p.10; **DUKE**, Simon (2006): 'Intelligence, security and information flows in CFSP' in: *Intelligence and National Security*, Vol.21, No.4, p.609.

In the realm of the CFSP, the EU Member States coordinate their foreign policy action to strengthen their political impact.²² In this aim, the EU's interests are currently represented by 136 delegations around the world, and a *Common Security and Defence Policy* (CSDP) was installed as part of the CFSP when new crises emerged in the EU's neighbourhood, like Kosovo in the 1990s, where the EU's dependency on third parties like NATO or the US in crisis management became apparent.²³ In the realm of the CSDP, the EU has engaged in its own military operations and civilian missions since 2003²⁴ to ensure its security by promoting peace and preventing conflicts abroad.²⁵ The CFSP is mainly put into effect by the *High Representative of the Union for Foreign Affairs and Security Policy* (High Representative), currently Catherine Ashton, and the *European External Action Service* (EEAS) that she heads.²⁶ The EEAS serves as a 'foreign ministry' for the EU and manages the EU's crisis

²² **VAZ ANTUNES**, Maj.Gen. João Nuno Jorge (2007): 'Developing an Intelligence Capability – The European Union' in *Studies in Intelligence*, Vol.49, No.4. Central Intelligence Agency, Center for the Study of Intelligence; Former Chairman of the EU Military Committee, General Henri Bentégeat as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2008), Autumn / Winter 2008, Issue 6, p.6.

²³ **EUROPEAN EXTERNAL ACTION SERVICE WEBPAGE**: 'EEAS - What we do'; **TREATY OF AMSTERDAM** (1997) amending the Treaty on European Union, the treaties establishing the European communities and certain related acts. Amsterdam, 2 October 1997, paragraph 10, amending Title V, Article J.7.1., p.12; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'; **DUKE** (2006): 'Intelligence, security and information flows in CFSP', p.606f; **DCAF Backgrounder** (2006): 'Contemporary Challenges for the Intelligence Community', March 2006, p.1; **VILLADSEN**, Ole R. (2000): 'Prospects for a European Common Intelligence Policy' in *Studies in Intelligence*, Summer 2000, No.9; Former Chairman of the EU Military Committee, General Henri Bentégeat as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2008), Autumn / Winter 2008, Issue 6, p.6.

²⁴ Currently, three EU military operations are taking place (EUFOR Althea in Bosnia-Herzegovina; EUNAVFOR Atalanta in the Gulf of Aden; and EUTM Somalia). Additionally, twelve EU civilian missions are being conducted (EULEX Kosovo, EUCAP Sahel in Niger, EUPOL COPPS in the Palestinian territory, EUBAM Rafah, EUSEC RD Congo, EUPOL RD Congo, EUBAM Moldova and Ukraine, EUMM Georgia, EUPOL Afghanistan, EUJUST LEX in Iraq, EUCAP Nestor in Somalia, and EUAVSEC South-Sudan). Correct as of August 2012. **EUROPEAN EXTERNAL ACTION SERVICE WEBPAGE**: 'Overview of the missions and operations of the European Union August 2012'.

²⁵ **VILLADSEN** (2000): 'Prospects for a European Common Intelligence Policy'; **DUKE** (2006): 'Intelligence, security and information flows in CFSP', p.606 and 616; Former Chairman of the EU Military Committee, General Henri Bentégeat as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2008), Autumn / Winter 2008, Issue 6, p.6; **TREATY OF AMSTERDAM** (1997) amending the Treaty on European Union ..., paragraph 10, amending Title V, Article J.7.2., p.12; **BORN**, Hans, Suzana ANGHEL, Alex DOWLING and Teodora FUIOR (2008): 'Parliamentary Oversight of ESDP Missions'. Policy Paper No.28 of the *Geneva Center for the Democratic Control of Armed Forces* (DCAF), p.1f.

²⁶ See Agendas and Statements of the High Representative on the EEAS main webpage www.eeas.europa.eu.

response actions.²⁷ For this purpose, it incorporates "all key military and civilian crisis management units" of the EU, such as the *EU Military Staff* (EUMS), tasked with strategic planning for military operations, and the *Crisis Management and Planning Directorate* (CMPD), responsible for the coordination of both military and civilian crisis management activities and the actions of third parties like NATO or UNO.²⁸

European External Action Service

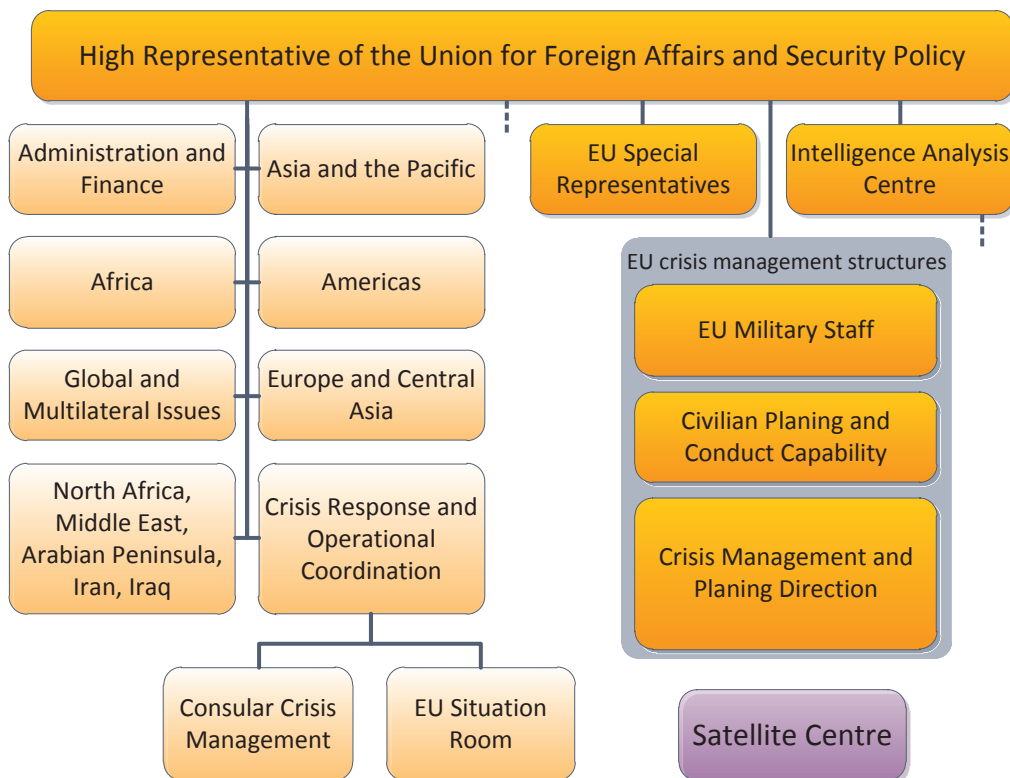


Figure 2: Organisational chart of the European External Action Service, indicating the relative positions of the Intelligence Analysis Centre, the EU Military Staff, and the Satellite Centre as independent agency of the EU

²⁷ **CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION** (2010) as amended by the Lisbon Treaty of 2007. Published in the Official Journal of the European Union, 30 March 2010, C 83/27, Articles 18 and 27(3) TEU; **COUNCIL OF THE EUROPEAN UNION** (2010c): 'Council Decision of 26 July 2010 establishing the organisation and functioning of the European External Action Service', 2010/427/EU, reasoning number 3, p. L 201/30.

²⁸ **RETTMANN**, Andrew (2010i): 'Ashton set for conciliatory dinner with defence ministers' in *EU Observer*, 23 April 2010; **COUNCIL OF THE EUROPEAN UNION** (2008f): 'EU Concept for Military Planning at the Political and Strategic level'. European Union Military Staff to the European Union Military Committee, Brussels, 16 June 2008, 10687/08, p.7; **EUROPEAN EXTERNAL ACTION SERVICE WEBPAGE**: 'CSDP structures and instruments'.

Several EU bodies engage in CFSP decision-making: the *European Council*, composed of the Heads of State or Government of the Member States, decides on the general objectives and basic guidelines for the CFSP.²⁹ Following this, the Foreign Ministers in the *Council* take the decisions necessary to implement the CFSP, for instance whether to initiate a mission.³⁰ The Council is advised by the *Political and Security Committee* (PSC), which comprises senior representatives of each Member State and issues opinions on available policy options.³¹ The PSC is in turn advised on military questions by the *EU Military Committee*, composed of the Chiefs of Defence of the Member States.³² It will be argued that these CFSP decision-making bodies receive intelligence support from the EU bodies SatCen, IntDir, and IntCen, which provide them with background, warning, and assessments of risks or likely implications for the EU's security.³³

In contrast, the alleged EU intelligence bodies Europol and Frontex fall within the realm of the AFSJ. Under the notion of AFSJ, various EU policies are united that shall improve the cooperation of the Member States in policing and judicial questions to tackle issues affecting the internal security of the EU, like illegal trafficking, terrorism or organized crime.³⁴ EU-level cooperation on these issues is especially necessary as the abolishment of the EU

²⁹ **CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 26 TEU.

³⁰ Ibid.

³¹ Ibid. Article 38 TEU.

³² **COUNCIL OF THE EUROPEAN UNION** (2002b): 'Suggestions for procedures for coherent, comprehensive EU crisis management'. Council of the European Union Secretariat to the Delegations, Brussels, 9 January 2002, 14613/01, p.9f.

³³ **LOWENTHAL** (2009): *Intelligence – from secrecy to policy*, p.3; **ČRNČEC** (2009): 'A new intelligence paradigm', p.152; **WILLS** (2011): *Guidebook: Understanding Intelligence Oversight*, p.11; **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.15; **DUKE** (2006): 'Intelligence, security and information flows in CFSP', p.616f; **NOMIKOS**, John M. (2005): 'A European Union intelligence service for confronting terrorism', p.198.

³⁴ **CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION** (2010) as amended by the Lisbon Treaty of 2007. Published in the Official Journal of the European Union, 30 March 2011, C 83/73, Article 67(3) TFEU; **HILLEBRAND**, Claudia (2011): 'Guarding EU-wide counter-terrorism policing: the struggle for sound parliamentary scrutiny of Europol' in: *Journal of Contemporary European Research*, Vol.7, No.4, p.505.

internal borders limited the Member States' capabilities to successfully combat these problems on their own.³⁵ AFSJ measures comprise, for example, the *European Arrest Warrant*, joint border patrols, the freezing of money assets of suspected terrorists, and the *Schengen Information System*, a common database for police and immigration authorities.³⁶ AFSJ policies are mainly implemented by the Commission, in particular by its Directorates for Justice and Home Affairs.

With regard to AFSJ decision-making, the European Council decides on the strategic guidelines of the AFSJ in multi-annual working programmes – the current Stockholm programme is in effect from 2010 to 2014.³⁷ Other than for the CFSP, the European Parliament (EP), however, shares responsibility for decision-making with the Council.³⁸ In AFSJ-matters, the latter comprises the Ministers for Justice and Home Affairs.

Thus, having outlined the policy areas in which the EU needs intelligence support, the following sections argue that five EU bodies qualify as intelligence bodies according to the definition used in this work. To argue this, it is necessary to examine whether they are governmental EU bodies tasked to produce intelligence, and to outline their activities in collection, processing, analysis, and dissemination of intelligence products to CFSP or AFSJ decision-making bodies.

³⁵ WALSH, James Igoe (2009): 'Security Policy and Intelligence Cooperation in the European Union'. Paper prepared for the biennial meeting of the European Union Studies Association, Los Angeles, April 2009, p.5f.

³⁶ CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (2010) as amended by the Lisbon Treaty, Article 75 TFEU; EUROPA SUMMARIES OF EU LEGISLATION: 'The Schengen area and cooperation'.

³⁷ Ibid. Article 68 TFEU; RIPOLL-SERVENT, Ariadna (2010): 'Point of no return? The European Parliament after Lisbon and Stockholm' in: *European Security*, Vol.19, No.2, p.192; THE STOCKHOLM PROGRAMME (2010): 'An open and secure Europe serving and protecting citizens'. Published in the Official Journal of the European Union, part IV (notices), from the European Council, 4 May 2010, C 115/20.

³⁸ CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (2010) as amended by the Lisbon Treaty, Articles 74, 77(2), 79(2), 81(2), 82(1)2, 87(2) TFEU.

3.1 The EU Satellite Centre

The first EU body whose intelligence function is examined is the *European Union Satellite Centre* (SatCen), situated in Torrejón de Ardoz in Spain.³⁹

Formal EU body tasked to provide intelligence

SatCen was originally founded in 1991 as an institution of the *Western European Union* (WEU), an intergovernmental organisation distinct from the EU.⁴⁰ However, as the WEU's tasks were increasingly duplicated in the EU, its members agreed to dismantle the WEU, transferring its capabilities to the EU.⁴¹ Accordingly, in July 2001, the WEU SatCen structures were assigned to the EU and it became an official EU agency.⁴² SatCen is tasked to "support the decision-making of the European Union in the field of the CFSP ... by providing ... products resulting from the analysis of satellite imagery and collateral data".⁴³ To fulfil this task, its staff in 2011 comprised 104 image analysts, geospatial specialists and support personnel plus four seconded national experts, and its budget was more than €17 million.⁴⁴

³⁹ **COUNCIL OF THE EUROPEAN UNION** (2001c): 'Council Joint Action of 20 July 2001 on the establishment of a European Union Satellite Centre'. 2001/555/CFSP, published in the Official Journal of the European Communities, 25 July 2001, Article 1, p. L 200/5; **EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE**.

⁴⁰ **VILLADSEN** (2000): 'Prospects for a European Common Intelligence Policy'. The WEU was mandated to ensure the collective self-defence and economic, social and cultural collaboration of its Member States. See **THE BRUSSELS TREATY AS AMENDED BY THE PARIS AGREEMENTS** (1954): Brussels Treaty, signed on 17 March 1948, amended by the Paris Agreements, signed on 23 October 1954.

⁴¹ **WESTERN EUROPEAN UNION WEBPAGE**: 'History of WEU'; **WESTERN EUROPEAN UNION** (2000): 'Marseille Declaration'. WEU Council of Ministers, Marseille, 13 November 2000, see in particular paragraph 6; **WESTERN EUROPEAN UNION** (2010): 'Statement of the Presidency of the Permanent Council of the WEU on behalf of the High Contracting Parties to the Modified Brussels Treaty – Belgium, France, Germany, Greece, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom'. Decision to close the WEU, Brussels, 31 March 2010.

⁴² **COUNCIL OF THE EUROPEAN UNION** (2001c): 'Council Joint Action ... on the establishment of a European Union Satellite Centre', reasoning 1, p. L 200/5.

⁴³ **COUNCIL OF THE EUROPEAN UNION** (2011d): 'Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action 2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011, Article 2(1), p.1.

⁴⁴ **EUROPEAN UNION SATELLITE CENTRE** (2011): *Annual Report 2011*, 4. Resource Management, p.29ff; **EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE**.

Collection

SatCen's products are based on SATINT, meaning optical satellite data and radar imagery.⁴⁵

It collects the necessary raw data primarily by purchasing it, for example from commercial partners or from Indian, Russian or US satellites.⁴⁶ Furthermore, SatCen increasingly formed agreements with EU Member States, currently Germany, Italy, France, Spain, Belgium and Greece, to receive their governmental satellites' imagery.⁴⁷ Additionally, SatCen collects its own OSINT to underpin the imagery.⁴⁸

While some scholars doubt SatCen's ability to guarantee the provision of good intelligence in a crisis situation due to its dependence on commercial and foreign input, it actively tries to diminish this dependence through further arrangements with Member States and commercial providers that give SatCen's orders maximum priority.⁴⁹ According to its annual report of 2011, SatCen is optimistic to thereby acquire more and better imagery.⁵⁰

To conclude, despite the fact that SatCen "neither owns nor operates any satellites", it engages in intelligence collection according to the definition elaborated in this work.⁵¹

⁴⁵ DUKE (2006): 'Intelligence, security and information flows in CFSP', p.622; EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.10.

⁴⁶ NOMIKOS (2005): 'A European Union intelligence service', p.193f.

⁴⁷ DUKE (2006): 'Intelligence, security and information flows in CFSP', p.622; EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.10.

⁴⁸ Ibid. The four subdivisions are: Data Preparation and Dissemination; Crisis Support and Situation Assessment; Mapping and Remote Sensing; and Non-Proliferation. See EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE.

⁴⁹ VILLADSEN (2000): 'Prospects for a European Common Intelligence Policy'; WALSH (2009): 'Security Policy and Intelligence Cooperation in the European Union'. Paper prepared for the biennial meeting of the European Union Studies Association, Los Angeles, April 2009, p.16; COUNCIL OF THE EUROPEAN UNION (2011b): 'Main aspects and basic choices of the CFSP: Annual report from the High Representative of the European Union for Foreign Affairs and Security Policy to the European Parliament – 2010'. Brussels, 6 July 2011, 12562/11, p.65; EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.21f.

⁵⁰ EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*.

⁵¹ NOMIKOS (2005): 'A European Union intelligence service', p.193f.

Processing and analysis

The collected SATINT is analysed in SatCen's Operations Division.⁵² By adding OSINT and assembling the pictures into meaningful contexts, it is turned into products such as interpreted satellite imagery, maps or charts indicating the exact geographic character of a location where the EU plans to deploy a military operation, or timeline-images showing the movements of armed groups or refugees in a crisis region.⁵³ Also, SatCen tailors the SATINT to the specific information need of the consumer, for example strategic analyses to assure the general security surveillance of areas of interest, to monitor the environmental situation, or to assist in verifying the implementation of arms control treaties. Furthermore, since its mandate was enlarged in 2006, SatCen produces operational analyses to support the preparation and conduct of EU missions and operations abroad.⁵⁴ The finished SatCen intelligence products – over 700 in 2011 – are disseminated on CD-ROM or DVD.⁵⁵

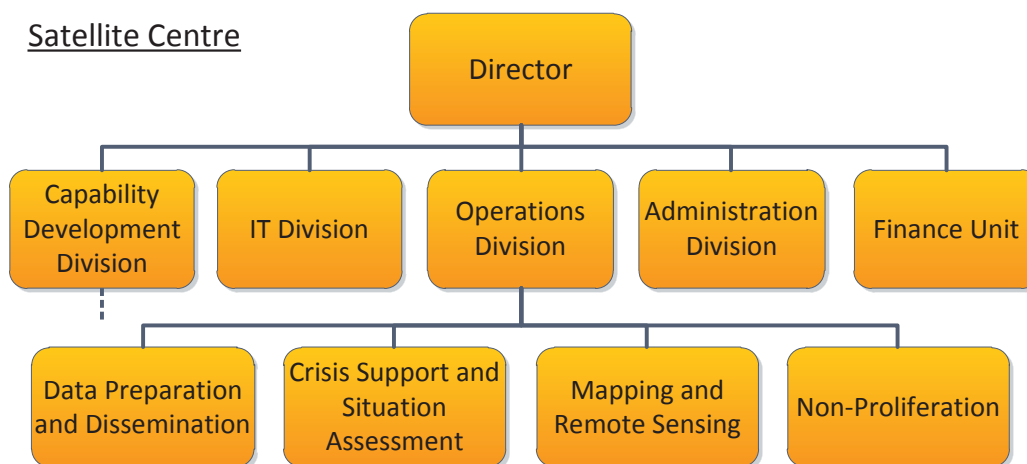


Figure 3: Organisational chart of the EU Satellite Centre

⁵² EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.10.

⁵³ COUNCIL OF THE EUROPEAN UNION (2011d): Statute of the Satellite Centre, Article 2(2), p.1; EUROPEAN UNION SATELLITE CENTRE PRESENTATION: Director of SatCen, Tomaž Lovrenčič, presentation to the European Parliament Subcommittee on Security and Defence, 18 March 2010, slides 7, 14, 16, 17; VILLADSEN (2000): 'Prospects for a European Common Intelligence Policy'; EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE.

⁵⁴ DUKE (2006): 'Intelligence, security and information flows in CFSP', p.622; in analogy to VILLADSEN (2000): 'Prospects for a European Common Intelligence Policy'.

⁵⁵ EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p. 7 and 18.

Dissemination to EU decision-makers

The priority consumers of SatCen's products are CFSP-related bodies: the High Representative, the EEAS's crisis management structures including the EU Military Staff and IntCen, the PSC, and the Commission.⁵⁶ Furthermore, operational analyses are disseminated to the EU personnel involved in EU missions and operations.⁵⁷ Finally, EU Member States and third parties (like third-party states or international organisations like UNO and NATO) may also submit a request to SatCen. Taking into account the relevance of the request and SatCen's capacities, the High Representative decides whether SatCen shall provide the relevant product.⁵⁸

The demand for SatCen's products recently increased considerably due to the emergence of "wider and more complex" crisis situations: thus, during the Arab revolts in 2010/2011, SatCen "was literally overwhelmed" by requests to support decision-making at EU level and military operations like EUFOR Libya or NATO's *Operation Unified Protector*.⁵⁹

To conclude, having outlined that SatCen is a formal EU body tasked to produce intelligence and engaging in collection, analysis and dissemination, the assumption that it qualifies as EU intelligence body is confirmed.

⁵⁶ EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE.

⁵⁷ EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.9.

⁵⁸ COUNCIL OF THE EUROPEAN UNION (2011d): ' Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action 2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011, Article 2(2), p.1.

⁵⁹ EUROPEAN UNION SATELLITE CENTRE (2011): *Annual Report 2011*, p.9 and 11f; ČRNČEC (2009): 'A new intelligence paradigm', p.157.

3.2 The EUMS's Intelligence Directorate

The second body examined in this work to assess whether it qualifies as EU intelligence body according to the given definition is the Intelligence Directorate (IntDir) of the EU Military Staff (EUMS).⁶⁰

Formal EU body tasked to provide intelligence

IntDir is the largest division of the EUMS, which itself was established as a formal EU body at the meeting of the European Council in Helsinki 1999 to provide "military expertise and support [to EU decision-making bodies] for the implementation of the security and defence policy".⁶¹ In 2010, the EUMS was transferred under the direction of the EEAS where it has primary responsibility for the strategic planning of the military part in EU crisis management operations.⁶² IntDir is responsible for providing the military intelligence, early warning and situation assessments necessary to enable the EUMS in the fulfilment of its tasks.⁶³ To do so, IntDir employs 41 staff, of which 39 are seconded experts from national intelligence services,

⁶⁰ Even if also in current texts often refer to as Intelligence *Division*, the former Intelligence Division was renamed already by autumn 2008 as the Intelligence *Directorate*. See **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2008), Autumn / Winter 2008, Issue 6, p.20; see false designation at **EUROPEAN COMMISSION** (2012j): 'Intelligence Division (INT) – products and information'. Answer of the High Representative to written question E-006022/2012 put by Martin Ehrenhauser, Brussels, 24 August 2012.

⁶¹ **COUNCIL OF THE EUROPEAN UNION** (2008g): 'Council Decision 2008/298/CFSP of 7 April 2008 amending Decision 2001/80/CFSP on the establishment of the Military Staff of the European Union'. Published in the Official Journal of the European Union, III Acts adopted under the EU Treaty, 12 April 2008, L 102/26; **COUNCIL OF THE EUROPEAN UNION** (2008f): 'EU Concept for Military Planning ...'. European Union Military Staff, 16 June 2008, p.7; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'.

⁶² **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision of 6 April 2009 establishing the European Police Office (Europol)', article 4 (3) a; EU Military Staff – 'Who we are, what we do' in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2012), Spring/Summer 2012, Issue 13, p.3; **COUNCIL OF THE EUROPEAN UNION** (2008f): 'EU Concept for Military Planning ...'. European Union Military Staff, 16 June 2008, p.7; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'.

⁶³ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer of the High Representative to written question E-006027/2012 put by Martin Ehrenhauser, Brussels, 7 August 2012; **COUNCIL OF THE EUROPEAN UNION** (2009c): 'Products of the EU Military Staff's Intelligence Division'. Preliminary Draft Reply to written question E-4211/09 put by Martin Ehrenhauser and Hans-Peter Martin. Brussels, 21 September 2009, 13327/09; former EU Military Staff Director of Intelligence, BrigGen Gintaras Bagdonas as interviewed in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2010), Spring/Summer 2010, Issue 9, p.16.

and is organised in three units: Policy, Support and Production.⁶⁴ Its budget is included in the general EUMS budget and therefore unknown.⁶⁵

Strictly speaking, the EUMS is the formal EU body tasked to provide military intelligence. However, in order to keep the focus, IntDir in particular shall be examined further as the intelligence body.

Collection

As most of the strategic and operational military intelligence necessary for the EUMS's tasks is not accessible via open sources, IntDir mainly uses information from finished intelligence products that are provided by the national intelligence services.⁶⁶ Thus, IntDir receives no raw data from the national agencies. As the national intelligence services share their information on a strictly voluntary basis and have no duty to support IntDir, IntDir tries to actively maintain close relations with the national services to ensure it receives sufficient information.⁶⁷ For example, IntDir's seconded staff members function as points of contact with their parent national intelligence service by acting as a "secure communication link" to directly transmit IntDir's intelligence needs or by indicating whether their parent agency has information on a specific topic.⁶⁸ In the same aim, IntDir organises the annual *Intelligence*

⁶⁴ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012; **EUROPEAN COMMISSION** (2011a): 'Intelligence Division (INT)'. Answer of High Representative Catherine Ashton to written question E-006392/2011 put by Martin Ehrenhauser, Brussels, 12 August 2011; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'; Dieter Haag and Carlos Bernardo Anaya as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.8.

⁶⁵ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012.

⁶⁶ **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'; **COUNCIL OF THE EUROPEAN UNION** (2009b): 'Provision of information to the EU Military Staff's Intelligence Division'. Preliminary Draft Reply to written question E-4210/09 put by Martin Ehrenhauser and Hans-Peter Martin. Brussels, 14 September 2009, 13296/09, p.3; **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.15.

⁶⁷ **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.15; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'.

⁶⁸ Dieter Haag and Carlos Bernardo Anaya as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.8 **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'.

Directors Conclave in Brussels, an informal meeting of IntDir's staff with the Directors of the national defence intelligence organisations.⁶⁹ Due to its dependence on national inputs, IntDir is somewhat limited in its scope to topics that the Member States are also interested in.⁷⁰

In addition to using national inputs, IntDir also requests products from the EU Satellite Centre.⁷¹ To improve this collection, it established a Geospatial Cell in its Support Branch in 2009.⁷² Finally, IntDir is very likely to collect OSINT as background information.⁷³

Processing and Analysis

In a first processing step, IntDir "cleans [all] shared intelligence of information that could identify its source" in order to mask the identity of the providing national agency.⁷⁴ The information is then analysed in IntDir's Production Branch, where analysts are grouped into six thematic and regional task forces.⁷⁵ The resulting products are tailored to the information need of the consumer, for example by monitoring a potential crisis region or by assessing the military capacities of the conflict-parties in a region where the EU plans to engage.⁷⁶

⁶⁹ Dieter Haag and Carlos Bernardo Anaya as cited in *IMPETUS – BULLETIN OF THE EU MILITARY STAFF* (2011), Spring/Summer 2011, Issue 11, p.8; *EUROPEAN COMMISSION* (2011a): 'Intelligence Division (INT)'. Answer to question E-006392/2011, 12 August 2011.

⁷⁰ *DUKE* (2006): 'Intelligence, security and information flows in CFSP', p.621.

⁷¹ *VAZ ANTUNES* (2007): 'Developing an Intelligence Capability'; *COUNCIL OF THE EUROPEAN UNION* (2009b): 'Provision of information to the EU Military Staff's Intelligence Division'. Preliminary Draft Reply, 14 September 2009, p.3.

⁷² Dieter Haag and Carlos Bernardo Anaya as cited in *IMPETUS – BULLETIN OF THE EU MILITARY STAFF* (2011), Spring/Summer 2011, Issue 11, p.8.

⁷³ This can be deduced from the statement that IntDir initially had "hardly any ... intelligence support other than open sources". *IMPETUS – BULLETIN OF THE EU MILITARY STAFF* (2011), Spring/Summer 2011, Issue 11, p.8.

⁷⁴ *WALSH* (2009): 'Security Policy and Intelligence Cooperation', p.15 and 18.

⁷⁵ *EUROPEAN COMMISSION* (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012; *EUROPEAN COMMISSION* (2011a): 'Intelligence Division (INT)'. Answer to question E-006392/2011, 12 August 2011; *VAZ ANTUNES* (2007): 'Developing an Intelligence Capability'; Dieter Haag and Carlos Bernardo Anaya as cited in *IMPETUS – BULLETIN OF THE EU MILITARY STAFF* (2011), Spring/Summer 2011, Issue 11, p.8.

⁷⁶ *VAZ ANTUNES* (2007): 'Developing an Intelligence Capability'; *WETZLING*, Thorsten (2006): 'Concerted high politics in the absence of angels? European intelligence governance and democratic accountability',

In addition to IntDir's independent analyses, it also engages in producing joint assessments together with another EU intelligence body, IntCen. Since January 2007, the *Single Intelligence Analysis Capacity* (SIAC) agreement demands that IntCen and IntDir combine all their information to issue a joint product after a joint analysis.⁷⁷

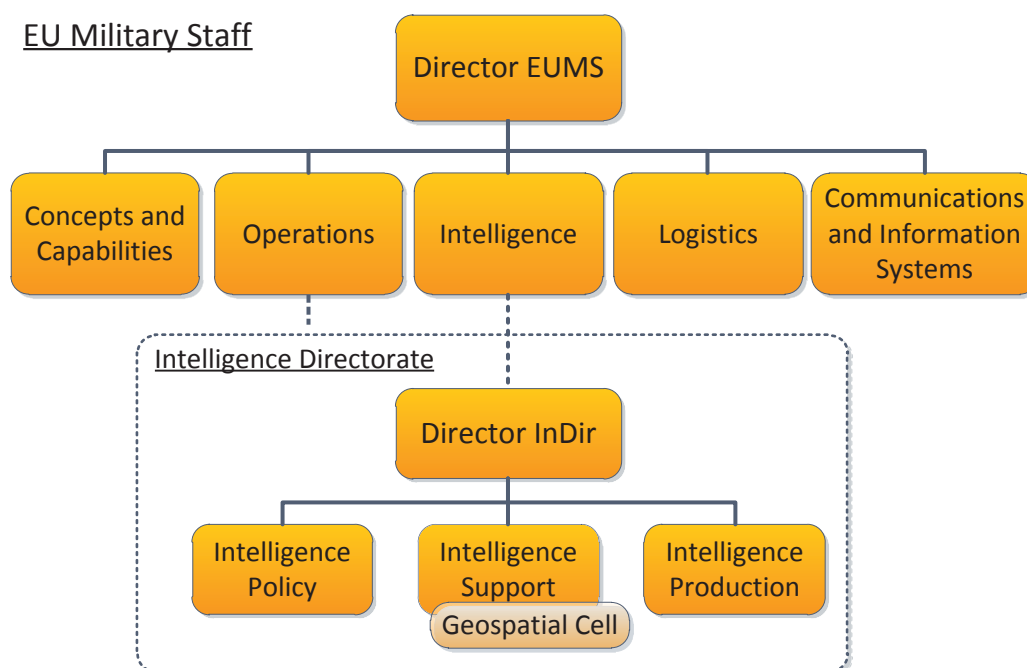


Figure 4: Organisational chart of the Intelligence Directorate

Dissemination

IntDir's products are mainly disseminated to the Director-General of the EUMS which transmits it to the Military Committee, which advises the PSC on military policy options.⁷⁸ Via the PSC, the Council is supported by IntDir's products, as, for example, in its choice of whether to

published in: *Polish International Political Review*, Vol.16, p.8; DUKE (2006): 'Intelligence, security and information flows in CFSP', p.620.

⁷⁷ COUNCIL OF THE EUROPEAN UNION (2008g): 'Council Decision ... on the establishment of the Military Staff of the European Union'; Former EU Military Staff Director of Intelligence, BrigGen Gintaras Bagdonas as interviewed in *IMPETUS – BULLETIN OF THE EU MILITARY STAFF* (2010), Spring/Summer 2010, Issue 9, p.16.

⁷⁸ DUKE (2006): 'Intelligence, security and information flows in CFSP', p.620; COUNCIL OF THE EUROPEAN UNION (2009c): 'Products of the EU Military Staff's Intelligence Division'. Preliminary Draft Reply, 21 September 2009.

initiate an EU military operation. Additionally, the High Representative, IntCen, the Commission and the defence intelligence services of the Member States receive IntDir's products.⁷⁹

Furthermore, the demands "in quality and quantity" for IntDir's products have "considerably" grown over time, probably due to the growing engagement of the EU in military activities in general.⁸⁰

To conclude, again in this case, the assumption according to which IntDir qualifies as EU intelligence body was confirmed.

3.3 The Intelligence Analysis Centre

The last CFSP-related body that is examined on whether it engages in intelligence activities is the Intelligence Analysis Centre (IntCen), situated in Brussels.

Formal EU body tasked to provide intelligence

IntCen's roots lie with two former intelligence bodies of the EU: the *Joint Situation Centre* (SitCen) and the *Crisis Room*.⁸¹ The Crisis Room, established under the Commission in 2001, analysed OSINT and ensured the communication between the Commission and its delegations during crises.⁸² In contrast, SitCen was originally established as a WEU structure and, like SatCen, was transferred to the EU in 2000 to support the newly-established CSDP

⁷⁹ Ibid.

⁸⁰ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012; **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.8.

⁸¹ **RETTMAN, ANDREW** (2010a): 'EU diplomats to benefit from new intelligence hub' in *EU Observer*, 22 February 2010.

⁸² **EUROPEAN COMMISSION** (2010c): 'Crisis Room: merger with the Watchkeeping Capability and the Joint Situation Centre (SitCen)'. Answer of High Representative Catherine Ashton to written question E-8273/2010 put by Martin Ehrenhauser, Brussels, 17 November 2010; **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer of High Representative to written question E-006017/2012 put by Martin Ehrenhauser, Brussels, 25 July 2012; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.55.

policy.⁸³ In 2011, SitCen and the Crisis Room were joined into a new body, IntCen, which forms an independent branch of the EEAS.⁸⁴ IntCen continues to be structurally adjusted; for example, SitCen's 24 hours / 7 days crisis monitoring unit was apparently transferred to the *EU Situation Room*, and in March 2012, parts of two of its units were shifted to other EEAS departments.⁸⁵ IntCen's staff currently numbers "close to 70", while it has "no annual budget of its own as it is part of the EEAS".⁸⁶

IntCen inherited SitCen's core tasks.⁸⁷ These fall into two categories: on the one hand, IntCen supports CFSP decision-making, for example by providing early warning of external threats, and risk assessments to support ongoing or planned EU crisis management operations.⁸⁸ On the other hand, since the Madrid bombings in 2004, SitCen was and IntCen now is tasked to provide strategic intelligence on terrorist threats to the EU and give advice to the Member

⁸³ **DAUN**, Anna (2005): 'Intelligence – Strukturen für die multilaterale Kooperation europäischer Staaten' in: *integration – Vierteljahreszeitschrift des Instituts für europäische Politik*, Vol.28, No.2, p.140; **VAN BUUREN**, Jelle (2009): 'Secret Truth. The EU Joint Situation Centre'. Amsterdam, *Eurowatch*, p.9; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.8; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.54.

⁸⁴ **EUROPEAN COMMISSION** (2012c): 'Restructuring of SitCen'. Answer of High Representative to written question E-006019/2012 put by Martin Ehrenhauser, Brussels, 2 August 2012.

⁸⁵ The Duty Area and the Consular Desk were transferred to the Crisis Response and Operational Coordination Managing Department, while the secure communications sector ComCen was integrated into the IT department of the Managing Directorate for Resources. See **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; **EUROPEAN COMMISSION** (2012c): 'Restructuring of SitCen'. Answer to question E-006019/2012, 2 August 2012; **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012.

⁸⁶ Ibid.; **HOUSE OF LORDS** (2009): 'Examination of Witnesses (Questions 92-119)', 21 January 2009, question 120 to Mr. Engell-Hansen; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **EUROPEAN COMMISSION** (2011b): 'Expansion of the Joint Situation Centre (SitCen)'. Answer to written question E-8361/2010 put by Martin Ehrenhauser, Brussels, 23 February 2011.

⁸⁷ **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012.

⁸⁸ **COUNCIL OF THE EUROPEAN UNION** (2008a): 'Lessons from the EU FFM – Civilian Aspects'. Partially-declassified version of Document 12584/1/04 REV 1 of 4 October 2008, formerly RESTREINT UE. Brussels, 17 December 2008, 12584/1/04, p.3f; **COUNCIL OF THE EUROPEAN UNION** (2008b): 'Revised Manual on EU emergency and crisis coordination'. General Secretariat of the council to the Delegations. Brussels, 24 September 2008, 10579/1/08, p.8; **COUNCIL OF THE EUROPEAN UNION** (2009e): 'Provision of information to the Situation Centre'. Answer to written question E-4209/09 put by Martin Ehrenhauser and Hans-Peter Martin, Brussels, 12 October 2009.

States "on possible preparatory action" if it identified flaws in their counterterrorism policy.⁸⁹ Thus, IntCen "bridge[s] the gap" by providing intelligence on both internal and external threats.⁹⁰

Collection

IntCen collects information from various sources. Firstly, IntCen inherited the Crisis Room's "considerable expertise" in the collection of OSINT.⁹¹ Secondly, IntCen's staff allegedly travel routinely to crisis zones to overtly collect first-hand impressions, for example to Libya in 2011.⁹² Furthermore, IntCen may request products from SatCen and has information-sharing agreements with the Commission, Council, Frontex, Europol and IntDir, and with the situation centres of the African Union and UN peacekeeping operations.⁹³

In addition, IntCen receives a multitude of 'grey' intelligence, that is, information that is not strictly secret but also not accessible to the wider public.⁹⁴ This category includes the

⁸⁹ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.55; **COUNCIL OF THE EUROPEAN UNION** (2004b): 'Fight against terrorism', Council Presidency, Brussels, 22 September 2004, 12685/04, proposition 4, p.3; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.9; **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.16; **COUNCIL OF THE EUROPEAN UNION** (2008b): 'Revised Manual...'. General Secretariat, 24 September 2008, p.40.

⁹⁰ **COUNCIL OF THE EUROPEAN UNION** (2005a): 'EU SitCen work programme'. Declassification of document 5244/05 Restreint UE of 11 January, 2005. Brussels, 20 December 2005, p.2.

⁹¹ **EUROPEAN COMMISSION** (2010c): 'Crisis Room: merger with ...'. Answer to question E-8273/2010, 17 November 2010; **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.55; **HOUSE OF LORDS** (2009): 'Examination of Witnesses', question 93 to Mr. Engell-Hansen.

⁹² **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **RETTMAN, ANDREW** (2010a): 'EU diplomats to benefit from new intelligence hub' in *EU Observer*, 22 February 2010; **RETTMAN, Andrew** (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; **CROSS** (2011): 'EU intelligence sharing', p.5.

⁹³ **COUNCIL OF THE EUROPEAN UNION** (2008b): 'Revised Manual...'. General Secretariat, 24 September 2008, p.40; **HOUSE OF LORDS** (2009): 'Examination of Witnesses', question 104, Mr. Engell-Hansen; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56.

⁹⁴ **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.60; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.9; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56.

"frequent and substantial situation report[s] provided [to the EEAS] by [the EU] delegations", by the EU crisis-management missions and operations, and by the EU's Special Representatives assigned to certain crisis regions.⁹⁵ Coming from *in situ*, these reports contain valuable background information to put events into the local context.⁹⁶ Having been transferred under the EEAS's authority in 2011, IntCen now has much more direct access to this information than when it was structurally separated, and it may even directly task these EU representatives "with gathering vital information on its behalf".⁹⁷

Thus, collecting considerable information on its own, IntCen is overall probably less dependent on information input from national intelligence services than IntDir.⁹⁸ Nevertheless, it naturally uses the finished intelligence products provided on a voluntary basis by its seconded national intelligence agents.⁹⁹ Additionally, IntCen is the only EU body to be (indirectly) provided with both internal and external intelligence from the national services: it receives military intelligence via IntDir (based on the *Single Intelligence Analysis Capacity* (SIAC) of 2007), and terrorism-related intelligence via the so-called *Counter Terrorism*

⁹⁵ **EUROPEAN COMMISSION** (2012j): 'Intelligence Division (INT) – products and information'. Answer to question E-006022/2012, 24 August 2012; **EUROPEAN COMMISSION** (2010d): 'Commission's political intelligence'. Answer to written question E-6630/2010, pub by Roger Helmer, Brussels, 28 September 2010; **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.16; **ANAGNOSTAKIS**, Dimitrios (2011): 'European Intelligence: a short description'. Research Institute for European and American Studies (RIEAS), transatlantic studies, p.1.

⁹⁶ **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.16.

⁹⁷ **RETTMAN, ANDREW** (2010a): 'EU diplomats to benefit from new intelligence hub' in *EU Observer*, 22 February 2010; **COUNCIL OF THE EUROPEAN UNION** (2010): 'Outcome of proceedings of CATS on 11 February 2010'. Brussels, 11 February 2010, 6557/10, English version, p.4; **CROSS** (2011): 'EU intelligence sharing', p.12.

⁹⁸ **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.60.

⁹⁹ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **RETTMAN, Andrew** (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012; **HOUSE OF LORDS** (2009): 'Examination of Witnesses', question 120 to Mr. Engell-Hansen; **EUROPEAN COMMISSION** (2011b): 'Expansion of the Joint Situation Centre (SitCen)'. Answer to question E-8361/2010, 23 February 2011.

Group.¹⁰⁰ Allegedly, such national inputs have improved considerably in quantity and quality since 2005.¹⁰¹

To conclude, overall, out of the bodies examined so far, IntCen makes use of the broadest input.

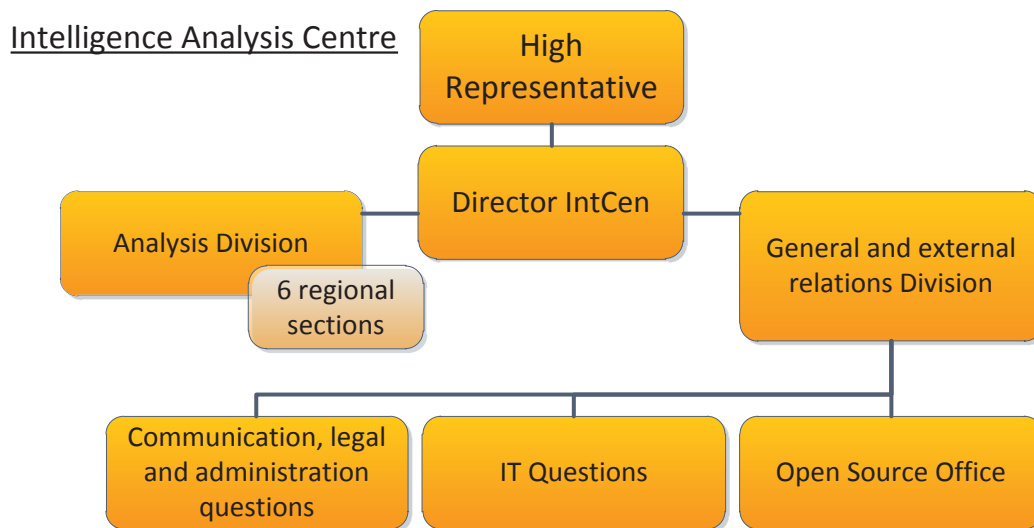


Figure 5: Organisational chart of the EU Intelligence Analysis Centre, as far as deduced from public sources

¹⁰⁰ The Counter Terrorism Group is an informal non-EU-related body that was set up after the events of 9/11 and is composed of the heads of the European security and intelligence services, including Norway and Switzerland, who are meeting twice a year. It shall improve the operational cooperation in counter-terrorism matters and was tasked to produce own threat assessments regarding Islamist terrorism. See ČRNČEC (2009): 'A new intelligence paradigm', p.155 and 158; WALSH (2009): 'Security Policy and Intelligence Cooperation', p.7 and 13; RETTMAN, Andrew (2011g): 'EU commission keen to set up new counter-terrorism office' in *EU Observer*, 31 March 2011; DEN BOER, Monica, Claudia HILLEBRAND and Andreas NÖLKE (2008): 'Legitimacy under pressure: the European web of counter-terrorism networks' in: *Journal of Common Market Studies*, Vol.46, No.1, p.116; VAN BUUREN (2009): 'Secret Truth. The EU Joint Situation Centre', p.10f; LUGNA, Lauri (2006): 'Institutional framework of the European Union Counter-Terrorism Policy setting' in: *Baltic Security & Defence Review*, Vol.8 - 2006, p.115. Otherwise, see COUNCIL OF THE EUROPEAN UNION (2011a): 'Report on Support from Member States Security and Intelligence Services to SITCEN'. Brussels, 10 June 2011, 14710/2/05. Declassification of document 14710/05 Restreint UE from the Director of SITCEN to COREPER II on 21 November 2005, p.2; COUNCIL OF THE EUROPEAN UNION (2008b): 'Revised Manual...'. General Secretariat, 24 September 2008, p.40; HOUSE OF LORDS (2009): 'Examination of Witnesses', question 93 to Mr. Engell-Hansen; COUNCIL OF THE EUROPEAN UNION (2007c): 'Annual report from the Council to the European Parliament on the main aspects and basic choices of the CFSP – 2006'. General Secretariat of the Council to COREPER. Brussels, 30 April 2007, 6992/1/07, paragraph 90, p.42.

¹⁰¹ HOUSE OF LORDS (2009): 'Examination of Witnesses', question 93 to Mr. Engell-Hansen.

Processing and Analysis

Both divisions of IntCen engage in analysing the collected information: thus, the *General and external relations division* comprises an "open source office" staffed with 21 analysts responsible for OSINT analysis, while the majority of analysts are situated in the *Analysis Division*, composed of six sections concentrating on different geographical areas or themes.¹⁰² This structural separation of OSINT from analysis of other sources is somewhat bewildering, but possibly explained by the composition of the Analysis Division's seconded agents (who account for "about 70 percent" of IntCen's total staff).¹⁰³ Thus, not all Member States are allowed to second agents to IntCen.¹⁰⁴ Instead, France, Germany, Italy, the Netherlands, Spain, Sweden and Great Britain decide on whom to accept: as the seconded agents have direct access to the intelligence provided by the national services to IntCen, they only allow agents from those States they fully trust.¹⁰⁵ The excluded States accept this situation, possibly because IntCen's products are not the only reports issued to the decision-makers and therefore, the privileged States' higher influence on IntCen's analysis does still not determine the policy outcome.¹⁰⁶ However, as this selection is apparently not applied to IntCen's OSINT analysts, the Member States might want to keep them structurally apart.

¹⁰² **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012; **RETTMAN**, Andrew (2010c): 'Ashton picks Finn to be EU "sparamaster"' in *EU Observer*, 17 December 2010; **RETTMAN**, Andrew (2010k): 'Competition heating up for EU intelligence chief job' in *EU Observer*, 14 September 2010.

¹⁰³ **RETTMAN**, Andrew (2010k): 'Competition heating up for EU intelligence chief job' in *EU Observer*, 14 September 2010; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.8; **CROSS** (2011): 'EU intelligence sharing', p.5; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011.

¹⁰⁴ **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.10.

¹⁰⁵ **MÜLLER-WILLE**, Björn (2006a): 'Improving the democratic accountability of EU intelligence' in: *Intelligence and National Security*, Vol.21, No.1, p.121; **RETTMAN**, Andrew (2010k): 'Competition heating up for EU intelligence chief job' in *EU Observer*, 14 September 2010.

¹⁰⁶ **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.62.

On the one hand, IntCen analyses the information jointly with IntDir, as demanded by the SIAC.¹⁰⁷ On the other hand, IntCen's analysts fuse the information collected by the various means into its own mainly strategic *all-source* intelligence products, like "strategic situation and risk assessments", "quarterly ... and six monthly" assessments tailored to specific crises and "daily news bulletins based on open sources".¹⁰⁸ Overall, IntCen might thereby issue "more than 150 reports per year" tailored to CFSP decision-makers and terrorism.¹⁰⁹

Dissemination

IntCen's main-task is to support EU decision-making.¹¹⁰ Accordingly, its products are primarily disseminated to the High Representative, the EEAS crisis management structures, and the PSC, as well as to the Council, the Commission and Europol and Frontex.¹¹¹ As these EU decision-making bodies comprise representatives from all EU Member States, all 27 receive the intelligence even if not all contributed by providing input.¹¹² Some consumers have criticised IntCen's products for being neither timely nor adding new information, possibly because the High Representative tasked it with questions to which "you could get the

¹⁰⁷ **COUNCIL OF THE EUROPEAN UNION** (2008d): 'Annual report from the Council to the European Parliament on the main aspects and basic choices of the CFSP – 2007'. General Secretariat of the Council to COREPER. Brussels, 25 April 2008, 8617/08, p.98.

¹⁰⁸ **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.8; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **HOUSE OF LORDS** (2009): 'Examination of Witnesses', question 93 to Mr. Engell-Hansen; **HERMAN** (1996): *Intelligence power in peace and war*, p.112; **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.59; **COUNCIL OF THE EUROPEAN UNION** (2009f): 'Joint Situation Centre products'. Answer to written question E-4121/2009 put by Martin Ehrenhauser, Brussels, 28 September 2009; **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.12; **COUNCIL OF THE EUROPEAN UNION** (2006): 'Summary of discussion'. General Secretariat of the Council to the Working Party on Terrorism, Brussels, 20 June 2006, 9961/06, paragraph 13.

¹⁰⁹ **COUNCIL OF THE EUROPEAN UNION** (2009d): 'Overview of SitCen reports and Political Recommendations'. Declassification of document 7261/07 Restreint UE of 12 March 2007. Brussels, 28 May 2009, p.2.

¹¹⁰ **CROSS** (2011): 'EU intelligence sharing', p.4.

¹¹¹ **COUNCIL OF THE EUROPEAN UNION** (2009f): 'Joint Situation Centre products'. Answer to E-4121/2009, 28 September 2009; **COUNCIL OF THE EUROPEAN UNION** (2008b): 'Revised Manual...'. General Secretariat, 24 September 2008, p.40; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.55; **COUNCIL OF THE EUROPEAN UNION** (2011a): 'Report on Support ... to SITCEN'. Brussels, 10 June 2011, p.3.

¹¹² **CROSS** (2011): 'EU intelligence sharing', p.2 and 5.

answers on Google".¹¹³ Despite this critique, IntCen's products successfully "helped [to] initiate and stimulate policy discussion ... [and] contributed to valuable evolutions in EU policy", and 75 of its recommendations on counterterrorism were adopted.¹¹⁴ As a secondary priority, national civilian and military services are also provided with information such as terrorist threat assessments, and Member States may ask IntCen to report on specific topics of common interest.¹¹⁵

To conclude, the last CFSP-related body examined also qualifies, as was assumed, as an intelligence body as IntCen is, as part of the EEAS, a formal EU body tasked to provide intelligence, and it engages in all four intelligence activities.

3.4 Europol

Having examined the EU bodies providing intelligence in the realm of CFSP, the first AFSJ-related body examined is the European Police Office (Europol), situated in The Hague, Netherlands.

¹¹³ **RETTMAN, ANDREW** (2010a): 'EU diplomats to benefit from new intelligence hub' in *EU Observer*, 22 February 2010; **RETTMAN, Andrew** (2011a): 'Staff leaving EU diplomatic service amid bad working conditions' in *EU Observer*, 30 September 2011.

¹¹⁴ **COUNCIL OF THE EUROPEAN UNION** (2009f): 'Joint Situation Centre products'. Answer to E-4121/2009, 28 September 2009; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.55; **COUNCIL OF THE EUROPEAN UNION** (2011a): 'Report on Support ... to SITCEN'. Brussels, 10 June 2011, p.3; **CROSS** (2011): 'EU intelligence sharing', p. 2 and 6; **COUNCIL OF THE EUROPEAN UNION** (2007c): 'Annual report from the Council to the European Parliament ... 2006', paragraph 128, p.52; **COUNCIL OF THE EUROPEAN UNION** (2009d): 'Overview of SitCen reports ...'. Declassification, 28 May 2009, p.2.

¹¹⁵ **COUNCIL OF THE EUROPEAN UNION** (2007c): 'Annual report from the Council to the European Parliament ... 2006', paragraph 90, p.42; **DUKE** (2006): 'Intelligence, security and information flows in CFSP', p.618.

Formal EU body tasked to produce intelligence

Europol was originally set up as an intergovernmental body outside EU structures, based on a treaty signed by the Member States in 1992.¹¹⁶ However, in January 2010, Europol was transformed into an official EU agency.¹¹⁷

Europol is tasked with supporting the national police services in combating terrorism and serious crime affecting the internal security of the EU by enhancing their cooperation.¹¹⁸ Towards this aim, Europol engages in activities such as facilitating information-sharing between the national services by providing a liaison network, promoting the harmonization of investigation techniques, and providing "intelligence and analytical support to Member States".¹¹⁹ To fulfil the latter task, Europol collects, processes, and analyses intelligence.

Collection

Unlike the bodies examined so far, Europol collects and uses personal data, mainly to produce operational intelligence.¹²⁰ As this information is not available through open sources and as Europol lacks the means to gather personal raw data itself, it depends on data input from the national law enforcement and intelligence services of the EU Member States.¹²¹

¹¹⁶ WALSH (2009): 'Security Policy and Intelligence Cooperation', p.8; **EUROPOL WEBPAGE**: 'Management'.

¹¹⁷ **CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 88 TFEU.

¹¹⁸ POP, Valentina (2009b): 'Ministers set to appoint new head of Europol' in *EU Observer*, 25 February 2009; **CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 88(1) TFEU; HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.501; WALSH (2009): 'Security Policy and Intelligence Cooperation', p.9; BURES, Oldrich (2008): 'Europol's fledgling counterterrorism role' in: *Terrorism and Political Violence*, Vol.20, No.4, p.501.

¹¹⁹ HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.503; BURES (2008): 'Europol's fledgling counterterrorism role', p.501; **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 5.

¹²⁰ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.47.

¹²¹ **COUNCIL OF THE EUROPEAN UNION** (2007b): 'Draft Council conclusions setting the EU priorities for the fight against organized crime based on the OCTA 2007'. Council Presidency to the multidisciplinary Group on Organized Crime. Brussels, 15 May 2007, 7547/3/07, paragraph 16, p.8; **COUNCIL OF THE EUROPEAN UNION**

Thus, for Europol to deliver useful intelligence, the Council recognised it as an "essential precondition" that the national agencies "systematically provide all relevant intelligence".¹²² Towards this aim, Europol's national liaison officers shall ensure the direct transmission of information from the national agencies.¹²³ Yet, despite this liaison system, the national services are allegedly still reluctant to share their information with Europol for fear of their autonomy.¹²⁴ However, this lack of effectiveness in personal data collection does not diminish Europol's overall collection function.

In addition to personal data, Europol collects OSINT, purchases commercial information and has established information-sharing agreements with EU bodies like the Commission, Frontex and IntCen, and third-party states and international organisations like Interpol.¹²⁵

Processing and Analysis

Europol files the collected information in two databases: on the one hand, the *Europol Information System* (EIS) contains limited basic information about individuals and groups suspected of crimes. This data pool is accessible to all national police agencies, which can also enter their own data. On the other hand, the *Analytical Work Files* (AWFs) contain much more sensitive data, such as the contact data of suspects and witnesses and details of

(2009): 'Council Decision ... establishing the European Police Office (Europol)', Articles 13(6) and 25(4); HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.503; THE STOCKHOLM PROGRAMME (2010): 'An open and secure Europe', paragraph 4.3.1.

¹²² COUNCIL OF THE EUROPEAN UNION (2012a): 'Discussion paper on intelligence-led policing through closer cooperation with Europol in the fight against itinerant criminal groups'. Brussels, 8 February 2012, p.4.

¹²³ HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.501; WALSH (2009): 'Security Policy and Intelligence Cooperation', p.9; EUROPOL WEBPAGE: 'Management'.

¹²⁴ BURES (2008): 'Europol's fledgling counterterrorism role', p.504f.

¹²⁵ COUNCIL OF THE EUROPEAN UNION (2007b): 'Draft Council conclusions ... based on the OCTA 2007', 15 May 2007, paragraph 16, p.8; COUNCIL OF THE EUROPEAN UNION (2009): 'Council Decision ... establishing the European Police Office (Europol)', Articles 13(6) and 25(4); HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.503; THE STOCKHOLM PROGRAMME (2010): 'An open and secure Europe', paragraph 4.3.1.

specific offences like the use of weapons of mass destruction. For example, one AWF focuses on Islamic fundamentalist terrorism.¹²⁶ The AWFs are accessible only by Europol analysts.¹²⁷

With "more than 100" of its total staff of 700 being criminal analysts, "analysis is at the core of Europol's activities".¹²⁸ They use the databases to identify patterns, for example in the behaviour of criminal or terrorism suspects that the individual national police agencies are not able to discern on their own, lacking the information of other agencies.¹²⁹ Furthermore, the analysts are supported by experts in Europol's specialised units on drugs, bombs, explosives and terrorism.¹³⁰

Europol clearly tailors its products to the needs of its respective consumers. Thus, Europol mainly produces operational intelligence based on personal data, but also strategic intelligence products like the *EU Terrorism Situation and Trend Reports* (TESAT) and the classified *European Organised Crime Threat Assessments* (OCTA) to support decision-making.¹³¹

¹²⁶ **BURES** (2008): 'Europol's fledgling counterterrorism role', p.502.

¹²⁷ **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.9f; **DAUN** (2005): 'Intelligence – Strukturen für ...', p.145f; **WALSH**, James Igoe (2006): 'Intelligence-sharing in the European Union: institutions are not enough' in: *Journal of Common Market Studies*, Vol.44, No.3, p.632; **COUNCIL OF THE EUROPEAN UNION** (2002): 'On the implementation of specific measures for police and judicial cooperation to combat terrorism in accordance with Article 4 of Common Position 2001/931/CFSP'. Council Decision 2003/48/JHA, 19 December 2002, Article 2(2).

¹²⁸ **EUROPOL MAIN PAGE**: 'Our People', as of June 2012.

¹²⁹ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.47; **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.56.

¹³⁰ **HILLEBRAND** (2011): 'Guarding EU-wide counter-terrorism policing', p.504.

¹³¹ **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 5; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.45.

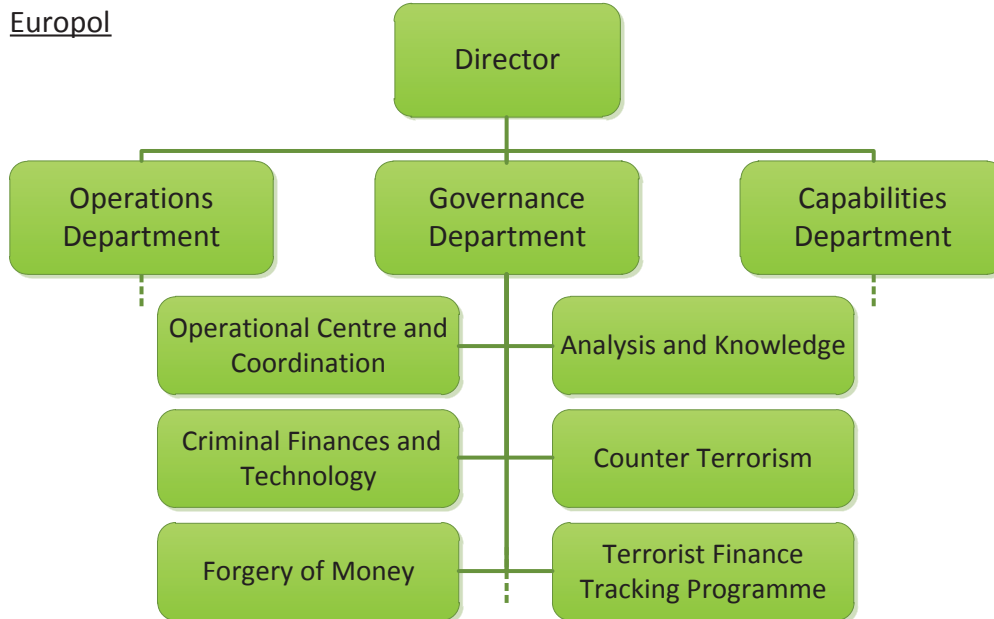


Figure 6: Organisational chart of Europol

Dissemination

Europol disseminates its operational analyses to the national law enforcement agencies, meaning that the consumers of its main products are identical to those who provide the input. As Europol is therefore somewhat likely to draw the same conclusions from this input as the national agencies did on their own, some scholars argue that Europol is not really adding value but only "paralleling the work of national agencies".¹³²

However, this reproach is somewhat unwarranted as Europol's strategic analyses are used by EU decision-making bodies: for example, in 2010 the Council received seventeen classified and various unclassified Europol products that became the basis for its recommendations on the fight against organised crime in Europe.¹³³

¹³² BURES (2008): 'Europol's fledgling counterterrorism role', p.509f.

¹³³ MÜLLER-WILLE (2008): 'The effect of international terrorism', p.54 and 59; WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.45 and 48; EUROPEAN COMMISSION (2012a): 'Breakdown of documents supplied to and received from Europol by security classification levels'. Answer to written question E-004373/2012 put by Martin Ehrenhauser, Brussels, 9 July 2012.

To conclude, Europol also qualifies as an EU intelligence body according to the definition used in this work, as it is, amongst other work, tasked to provide intelligence.

3.5 Frontex¹³⁴

While other scholars so far have not considered that Frontex, situated in Warsaw, qualifies as an intelligence body, this last section will argue that it does.¹³⁵

Formal EU body tasked to provide intelligence

Frontex, in operation since 2005, is the second official AFSJ agency of the EU and its role is to "facilitate and render more effective the ... management of the external borders" of the European Union to ensure its security.¹³⁶ To fulfil this, Frontex, amongst other tasks, helps to coordinate the national border management activities or joint operations, initiates rapid interventions, and provides "both general and tailored risk analyses" to the Member States.¹³⁷ It is the latter assignment that makes Frontex relevant to this work. Accordingly, Frontex provides operational intelligence mainly via its *Situation Centre*, whereas strategic analyses are issued by its *Risk Analysis Unit*.¹³⁸

¹³⁴ Frontex's legal name is 'European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union'.

¹³⁵ For example, see **MÜLLER-WILLE**, Björn (2006): 'Intelligence and democratic accountability: a blessing, not a curse' in: *European Security*, Vol.15, No.4, p.491, who does not count Frontex to the 'intelligence agencies'.

¹³⁶ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation EU No.1168/2011 amending Council Regulation EC No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union'. Regulation of 25 October 2011 as published in the Official Journal of the European Union, part I, 22 November 2011, L 204/5, Article 1(1); **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.52.

¹³⁷ **COUNCIL OF THE EUROPEAN UNION** (2004): 'Council Regulation (EC) No 2007/2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union'. In text referred to as **Frontex Regulation**, Article 2; **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/2, reasonings 9 and 10 and L 204/6, Articles 1(3)a(iv-v) and 1(7).

¹³⁸ **FRONTEx MAIN PAGE**: 'Mission and tasks', as of 10 June 2012; **EUROPEAN COURT OF AUDIT** (2011): 'Report on the annual accounts of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States for the financial year 2010, together with the Agency's replies'. Report 2011/C 366/08. Published in the Official Journal of the European Union, 15 December 2011, C366/42;

Collection

Frontex collects its information from various sources. The majority of its information stems directly from the Member States' or third parties' so-called "border crossing points" (like airports or ports), which provide information on illegal border crossings, asylum applications and forged-document entries on the basis of a cooperation agreement with Frontex.¹³⁹ To increase this input, Frontex actively pursues further agreements with partners in regions of interest for EU border security, like the Western Balkans or Northern Africa.¹⁴⁰

Additionally, Frontex collects OSINT via "constant media monitoring" and from academic publications.¹⁴¹ Frontex's own staff deployed in border management operations also provide information.¹⁴² Finally, Frontex has contracted cooperation agreements with EU bodies like Europol, the Commission, and possibly IntCen.¹⁴³ To increase the willingness of its partners to share classified information including personal data, Frontex established in 2011 the so-called *Frontex Risk Analysis Network* (FRAN), an information network linking Frontex with the Member States' national intelligence agencies and the EU bodies.¹⁴⁴

FRONTEx (2012): 'Ombudsman own-initiative inquiry OI/5/2012/BEH-MHZ'. Opinion from Frontex on the European Ombudsman's own-initiative inquiry into the implementation by Frontex of its fundamental rights obligations. Letter of 17 May 2012, Warsaw, p.5; **EUROPEAN COURT OF AUDIT** (2011): 'Report on [Frontex] 2010'. Report 2011/C 366/08.

¹³⁹ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.53; **FRONTEx MAIN PAGE**: 'Mission and tasks', as of 10 June 2012.

¹⁴⁰ **FRONTEx MAIN PAGE**: 'Strategic Analysis'.

¹⁴¹ **FRONTEx MAIN PAGE**: 'Mission and tasks', as of 10 June 2012.

¹⁴² **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.53; **FRONTEx MAIN PAGE**: 'Mission and tasks', as of 10 June 2012.

¹⁴³ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/2, reasoning 25. Also **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.53; **FRONTEx MAIN PAGE**: 'Information management'.

¹⁴⁴ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/13, Article 1(17); **FRONTEx MAIN PAGE**: 'Strategic Analysis'.

Processing and Analysis

With this input, Frontex's Situation Centre produces various operational intelligence products "on the ongoing situation at the external borders".¹⁴⁵ For example, in 2010, it issued "500 situation reports, early alert notices, ... 14 mission awareness reports" and Daily Newsletters including analysis of where and how many illegal immigrants were likely to encounter a specific border section, and alerts of increased trafficking in a certain region.¹⁴⁶ Additionally, since 2011, Frontex has assessed whether the concerned Member State has the necessary capacities in resources and equipment to successfully counter possible threats, and it may propose the launch of a joint operation if it identifies a capability gap.¹⁴⁷ Also in 2011, Frontex received limited authorisation to process personal data to identify persons suspected of being responsible for human trafficking.¹⁴⁸

In addition to operational intelligence, Frontex's Risk Analysis Unit issues strategic analyses outlining more general patterns and trends: they monitor "the global security environment, especially those political, economic, social, technological, legal and environmental factors which could affect border security."¹⁴⁹ Thereby, the strategic analyses identify risks, predict

¹⁴⁵ **FRONTEx MAIN PAGE:** 'Mission and tasks', as of 10 June 2012; **EUROPEAN COURT OF AUDIT** (2011): 'Report on [Frontex] 2010'. Report 2011/C 366/08; **FRONTEx** (2012): 'Ombudsman own-initiative inquiry', Letter of 17 May 2012, p.5.

¹⁴⁶ **FRONTEx MAIN PAGE:** 'Mission and tasks', as of 10 June 2012; **EUROPEAN COURT OF AUDIT** (2011): 'Report on [Frontex] 2010', C366/42; **FRONTEx** (2012): 'Ombudsman own-initiative inquiry', Letter of 17 May 2012, p.5.

¹⁴⁷ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/2, reasoning 17.

¹⁴⁸ **FRONTEx MAIN PAGE:** 'Operational Analysis'.

¹⁴⁹ **FRONTEx** (2012): 'Ombudsman own-initiative inquiry', Letter of 17 May 2012, p.26; **FRONTEx MAIN PAGE:** 'Strategic Analysis' and 'Risk Analysis'.

future trends and make recommendations for policy-making.¹⁵⁰ For example, in 2010, Frontex produced "10 long-term strategic assessments".¹⁵¹

Thus, this distinction makes it clear that Frontex tailors its products to the respective needs of the intelligence consumers.

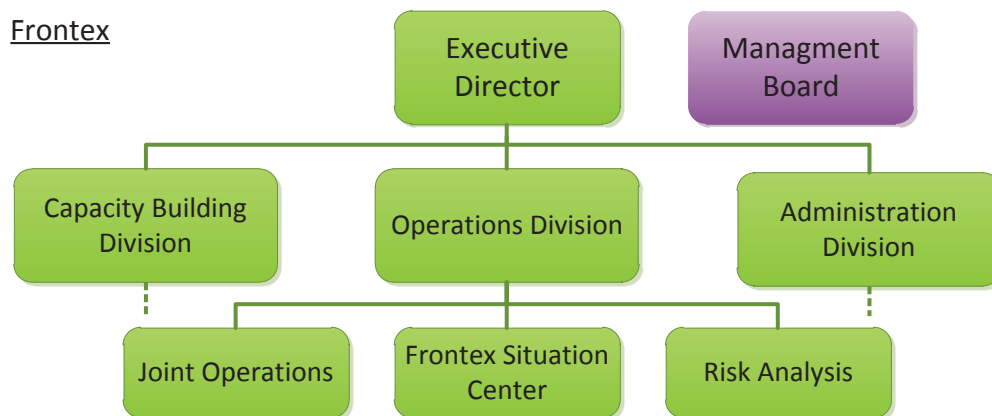


Figure 7: Organisational chart of Frontex

Dissemination

Frontex's operational analyses are directly disseminated to the personnel currently involved in border management, that is, national border guards or Frontex personnel in joint operations.¹⁵² There, the situation assessments and early warnings immediately support the conduct of operations. On the other hand, while the strategic analyses are equally disseminated to the national border control authorities, they are mainly issued to support EU decision-making bodies in the realm of AFSJ, like the Council or the Commission, by identifying future priorities of EU border security.¹⁵³

¹⁵⁰ **FRONTEX MAIN PAGE:** 'Risk Analysis'.

¹⁵¹ **EUROPEAN COURT OF AUDIT** (2011): 'Report on [Frontex] 2010', C366/42.

¹⁵² **FRONTEX MAIN PAGE:** 'Mission and tasks', as of 10 June 2012; **EUROPEAN COURT OF AUDIT** (2011): 'Report on [Frontex] 2010', C366/42; **FRONTEX** (2012): 'Ombudsman own-initiative inquiry', Letter of 17 May 2012, p.5.

¹⁵³ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/9, Article 1(7); **FRONTEX MAIN PAGE:** 'Strategic Analysis'.

To conclude, the last body examined in this work also qualifies, as assumed, as an EU intelligence body, according to the definition elaborated above.

3.6 Conclusion on the EU's intelligence capabilities

In the previous sections, it was argued that five EU bodies do indeed qualify as intelligence bodies according to the definition elaborated in this work, as they are formal bodies of the EU, tasked to provide intelligence, and engage in the four intelligence activities of collection, processing, analysis and dissemination. For example, IntDir's staff members recognised themselves as being "de facto an intelligence agency" when they referred to IntCen, SatCen and IntDir as "EU intelligence organisations".¹⁵⁴

As it is able to produce its own intelligence via these bodies, the EU benefits from considerable advantages: thus, instead of depending on input from national intelligence services to support EU decision-making, the EU intelligence bodies (ideally) ensure that good intelligence is provided on all topics of relevance for the EU, even if the theme is not of interest for any individual Member State.¹⁵⁵ Furthermore, they provide all the members of the EU decision-making bodies with the same information, which increases the likelihood of a shared perception of the situation and thus facilitates the formulation of a common policy.¹⁵⁶ Finally, EU intelligence bodies ideally aim to promote the well-being of the entire EU, whereas national intelligence risks being biased in the interest of the providing Member State.¹⁵⁷

Overall, it can therefore be concluded that the EU intelligence bodies add value by producing

¹⁵⁴ **MÜLLER-WILLE** (2006): 'Intelligence and democratic accountability', p.496; Former Intelligence Director at the EU Military Staff, Brig.Gen. Gintaras Bagdonas as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2008), Autumn / Winter 2008, Issue 6, p.8.

¹⁵⁵ **NOMIKOS** (2005): 'A European Union intelligence service', p.201; **MÜLLER-WILLE** (2008): 'The effect of international terrorism', p.60.

¹⁵⁶ Ibid. p.61; **CROSS** (2011): 'EU intelligence sharing', p.7. Or, as the European Security Strategy 2003 emphasis: "Common threat assessments are the best basis for common actions." **COUNCIL OF THE EUROPEAN UNION** (2003b): 'A secure Europe in a better world'. *European Security Strategy*, Brussels, 12 December 2003, p.12.

¹⁵⁷ **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.16.

various intelligence products tailored to the specific needs of the CFSP and AFSJ decision-making bodies.

Accordingly, while one might criticise the EU intelligence bodies' effectiveness or doubt that they produce good intelligence that is timely, tailored, digestible, and clear, it seems unwarranted to deny that the EU itself possesses intelligence capabilities in many ways similar to those at the national level.¹⁵⁸ However, it has to be mentioned that the recognition of the EU's intelligence capabilities depends strongly on the definition of intelligence used: thus, IntCen's Director emphasised that "there is little prospect for turning [the EU intelligence bodies] into ... genuine intelligence-gathering service[s] even in the 'long term'", and some scholars argue that the EU has no intelligence services, but only "supranational mechanisms for intelligence assessment" or "in-house intelligence capabilities [that] depend on intelligence support from member states".¹⁵⁹ By portraying these two as an alleged contrast – not having collection means versus engaging only in analysis –, they base their argument on a definition of intelligence according to which the EU's capabilities are not recognised as intelligence in their own right as long as the EU bodies do not engage in special powers collection of secret information. However, for the reasons outlined in section 2, it was chosen to not follow this definition of intelligence in this work.

Acknowledging that the EU employs five intelligence bodies, one might question which term would best describe the EU's intelligence capabilities: can one speak of an EU intelligence *structure*, or an EU intelligence *community*? As further examples, the former High Representative, Javier Solana, wanted SitCen to form the "principal centre for the EU intelli-

¹⁵⁸ See definition of good intelligence by LOWENTHAL (2009): *Intelligence – from secrecy to policy*, p.147.

¹⁵⁹ RETTMAN, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; DCAF Background (2006): 'Contemporary Challenges for the Intelligence Community', March 2006, p.5; ČRNČEC (2009): 'A new intelligence paradigm', p.148.

gence *architecture*", while members of IntDir's staff used the term of an "EU intelligence world".¹⁶⁰ However, for the following reasons and despite the still-weak formalisation of the EU intelligence realm, it is considered appropriate in this work to speak of an (emerging) EU intelligence *system* composed of the five EU intelligence bodies. Thus, as outlined above, the CFSP-related intelligence bodies IntCen, SatCen and IntDir are nowadays structurally united under the responsibility of the EEAS. This has increased their exchange and cooperation considerably. According to rumours, plans are currently being pursued to also establish an EU internal security institution similar to the EEAS which would then unite the AFSJ intelligence bodies Europol and Frontex.¹⁶¹ Equally, the EU intelligence bodies themselves increasingly urge for the development of guidelines for an 'Overarching Intelligence Support', for example to the EEAS, that would clarify the respective responsibilities of each EU intelligence body within the overall EU intelligence field. Finally, projects are currently being pursued to establish secure communication networks for the exchange of classified information between the EU intelligence bodies and national services, for example the EEAS-wide *Civil/Military Intelligence System Support*.¹⁶² Therefore, even if the bonds between the EU intelligence bodies are mostly not (yet) formalised, they arguably form an increasingly collaborating structure that is united in its aim to effectively support EU decision-making.

¹⁶⁰ WETZLING (2006): 'Concerted high politics in the absence of angels?', p.8; Dieter Haag and Carlos Bernardo Anaya as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.9.

¹⁶¹ RETTMAN, Andrew (2011g): 'EU commission keen to set up new counter-terrorism office' in *EU Observer*, 31 March 2011.

¹⁶² Dieter Haag and Carlos Bernardo Anaya as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.9; Former EU Military Staff Director of Intelligence, BrigGen Gintaras Bagdonas as interviewed in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2010), Spring/Summer 2010, Issue 9, p.16; **EUROPEAN COMMISSION** (2012f): 'Military Intelligence System Support (MISS)'. Answer of the High Representative to written question E-006023/2012 put by Martin Ehrenhauser, Brussels, 6 August 2012.

Overall, it can be concluded from the first part of this work that the EU itself has, even if argued otherwise by some EU bodies, an intelligence system, comprising the EU intelligence bodies SatCen, IntDir, and IntCen in the realm of CFSP, and Europol and Frontex for the AFSJ.

4 EU intelligence oversight

The first part of this work argues that the EU possesses its own intelligence system, as five EU bodies engage in intelligence activities. On this basis, it concludes that the Commission's statement according to which no "component of the EEAS is an 'intelligence service'" is unwarranted.¹⁶³

Therefore, the second part of this work examines whether the second statement outlined in the introduction is warranted: according to IntCen's Director, there is no need for further parliamentary scrutiny of the EU intelligence bodies as they are already sufficiently overseen.¹⁶⁴ In order to assess this argument, the following sections focus on the EU's provisions of parliamentary oversight. To do so, however, it is first necessary to define what is understood by intelligence oversight and democratic accountability.

4.1 The concepts of intelligence oversight and democratic accountability

Oversight "refers to an actor scrutinizing an organisation's ... activities with the aim of evaluating its compliance with particular criteria and on this basis, issuing recommendations or orders".¹⁶⁵ Thereby, oversight aims, for example, to improve the efficiency and effectiveness of the organisation's performance, to prevent abuse or illegal conduct, to protect civil

¹⁶³ **COUNCIL OF THE EUROPEAN UNION** (2010d): 'EU Observer article of 22 February 2010'. Answer to written question E-1131/10 put by Martin Ehrenhauser, Brussels, 3 May 2010.

¹⁶⁴ **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011.

¹⁶⁵ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41.

liberties, and to generally ensure that the overseen body acts according to the public will.¹⁶⁶ Accordingly, *intelligence oversight* means that an intelligence body is reviewed, for example, with regard to its activities, personnel management, budgetary use, or legal framework in order to prevent bad behaviour and improve its performance.¹⁶⁷ Intelligence oversight can be exercised by a variety of actors, like executive institutions, internal oversight bodies, courts, the public and media, or the parliament.¹⁶⁸ However, too much oversight hampers the intelligence service's performance as it binds resources, while too little oversight may promote unlawful behaviour or poor-quality intelligence.¹⁶⁹ Therefore, good oversight needs to be carefully balanced between these two extremes.¹⁷⁰

Within intelligence oversight, parliamentary oversight has a somewhat special position. Prior to the 1970s, it was common practice not to include parliaments in intelligence oversight as the latter was seen as the exclusive prerogative of executive and judicial actors.¹⁷¹ However, various abuses by the government, for example of the US intelligence services, changed this perception: thus, nowadays, "parliamentary oversight of intelligence services has become an international norm ... for democracies" that mainly aims to counterbalance the executive's influence on intelligence and have a checking and balancing effect.¹⁷² Additionally, as a

¹⁶⁶ **BALDINO** (2010a): 'Introduction: Watching the Watchman', p.10.

¹⁶⁷ **BRUNEAU, BORAZ** (2007): 'Introduction: Intelligence Reform', p.14; **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.102.

¹⁶⁸ **GILL, Peter** (2007): 'Democratic and parliamentary accountability of intelligence services after 9/11' in: **BORN, Hans and Marina CAPARINI** (Eds., 2007): *Democratic Control of Intelligence Services – Containing Rogue Elephants*. Ashgate Publishing Limited, Farnham, UK, p.198f.

¹⁶⁹ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.104.

¹⁷⁰ **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.38.

¹⁷¹ **BORN, Hans and Loch K. JOHNSON** (2005): 'Balancing operational efficiency and democratic legitimacy' in: **BORN, Hans, Loch K. JOHNSON, and Ian LEIGH** (Eds., 2005): *Who's watching the spies? Establishing Intelligence Service Accountability*. Potomac Books, Inc., Washington D.C. Chapter 12, p.227.

¹⁷² **LEIGH, Ian** (2005): 'More closely watching the spies: three decades of experiences' in: **BORN, Hans, Loch K. JOHNSON, and Ian LEIGH** (Eds., 2005): *Who's watching the spies? Establishing Intelligence Service Accountability*. Potomac Books, Inc., Washington D.C., p.8 and 4; **BORN, Hans** (2007): 'Parliamentary and external oversight of intelligence services' in: **BORN, Hans and Marina CAPARINI** (Eds., 2007): *Democratic*

representative of the people, the parliament is seen as best able to ensure by its oversight that intelligence activities are in accordance with the public will.¹⁷³ Therefore, most scholars nowadays deem it best practice for the parliament to engage in extensive, continuous, broad intelligence oversight, even if this is in practice, even in Western states, not always realised.¹⁷⁴

The concept of democratic accountability is closely related to the notion of parliamentary oversight. Democratic accountability is composed of two elements. Firstly, 'being accountable' means that a body entrusted with a certain responsibility or task has to give account - that is, give answer for how it exercises its duties - to the entrusting principal.¹⁷⁵ Secondly, because in a democracy all state authority emanates from the people, the people is this entrusting principal. Accordingly, democratic accountability means that all actors exercising state authority, including intelligence services, are ultimately accountable to the people or to their representatives in the parliament. Through conducting oversight, the parliament or citizens demand democratic accountability from an intelligence body. Thereby, they aim to ensure that "no ... decision is taken without or against the will of the people" and that the intelligence activities serve the public interest.¹⁷⁶ As a side effect, democratic

Control of Intelligence Services – Containing Rogue Elephants. Ashgate Publishing Limited, Farnham, UK, p.169; **BRUNEAU**, BORAZ (2007): 'Introduction: Intelligence Reform', p.15.

¹⁷³ **BORN** (2007): 'Parliamentary and external oversight', p.164.

¹⁷⁴ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.106.

¹⁷⁵ **GREENWOOD**, David and Sander HUISMAN (2004): *Transparency and Accountability of police forces, security services and intelligence services*. Study for the Center of Democratic Control of Armed Forces (DCAF), Geneva, p.10.

¹⁷⁶ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41. In analogy to **SMIST**, Frank J. Jr. (1994): *Congress oversees the United States intelligence community*. Second Edition, The University of Tennessee Press, Knoxville p.12; **LEIGH** (2005): 'More closely watching the spies', p.7; **MÜLLER-WILLE** (2006): 'Intelligence and democratic accountability', p.492.

accountability helps to ensure the legitimacy and public acceptance of the intelligence bodies as the citizens perceive them to be 'in their control'.¹⁷⁷

To conclude, democratic accountability in the sense used in this work refers only to specific actors – the parliament and the citizens – engaging in oversight.¹⁷⁸ According to WILLS, it is nowadays an internationally-accepted norm that intelligence bodies in general should be subject to oversight and be held democratically accountable, just like any other state body or function.¹⁷⁹ Thus, being provided with its own intelligence system, the EU should also ensure its oversight and democratic accountability, including the appropriate parliamentary scrutiny of the EU intelligence bodies.

4.2 Actors of parliamentary EU intelligence oversight

While probably agreeing with the general need for overseeing intelligence, IntCen's Director argues that the current provisions of parliamentary oversight of the EU intelligence bodies are adequate.¹⁸⁰ In the following, it is therefore assessed whether this is indeed the case.

However, there is no universally-accepted standard of good oversight that would indicate the perfect degree of parliamentary oversight for the EU intelligence bodies.¹⁸¹ Hence, it is impossible to objectively determine in this work whether the parliamentary oversight in place is perfectly adequate.¹⁸² Therefore, the following sections instead are limited to outlining the provisions currently in place for the parliamentary oversight of the EU intelligence bodies. Should thereby weaknesses or flaws be identified, this will be taken as

¹⁷⁷ Ibid.

¹⁷⁸ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41.

¹⁷⁹ Ibid.,; WETZLING (2006): 'Concerted high politics in the absence of angels?', p.3.

¹⁸⁰ RETTMAN, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011.

¹⁸¹ GILL (2007): 'Democratic and parliamentary accountability', p.198.

¹⁸² In analogy to MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.105.

an indication that, in contrast to the Director's opinion, the parliamentary oversight of the EU intelligence bodies is not adequate but needs improvement.

At EU-level, parliamentary oversight can be executed by the European Parliament (EP) and by the national parliaments (NPs) of the EU Member States. There are three preconditions for them to be able to engage in effective oversight: firstly, they need to be provided with sufficiently experienced staff, resources and expertise. Secondly, they need to be provided with the necessary legal mandate and powers, such as the authority to start their own investigations, to oversee all topics requiring scrutiny of all intelligence bodies, and to access the necessary classified information. Finally, the members of parliament engaging in oversight need to have the appropriate attitude and be willing to pro-actively, continuously and thoroughly scrutinise the EU intelligence bodies.¹⁸³

Therefore, the EP's and NPs' performance in parliamentary oversight of the EU intelligence bodies will be examined on these three preconditions – ability, authority, and will - with regard to various issues where parliamentary oversight is required. However, prior to focusing on specific topics, the general oversight capabilities of the EP and NPs are outlined.

4.2.1 The EP's oversight committees

The EP as a whole is likely to lack both the time and expertise for continuous in-depth intelligence oversight. Accordingly, this task should ideally be referred to special committees focusing exclusively on intelligence oversight, to give this issue the attention it requires.¹⁸⁴

¹⁸³ **BORN**, JOHNSON (2005): 'Balancing operational efficiency', p.236ff; **DCAF Backgrounder** (2006b): 'Parliamentary Oversight of Intelligence Services', March 2006, p.3ff; **BORN**, Hans and Fairlie JENSEN (2007): 'Intelligence services: strengthening democratic accountability' in: BORN, Hans and Marina CAPARINI (Eds., 2007): *Democratic Control of Intelligence Services – Containing Rogue Elephants*. Ashgate Publishing Limited, Farnham, UK, p.266f.

¹⁸⁴ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41.

In the field of CFSP, the EP has three committees that might engage in intelligence oversight according to their general mandate: in addition to a Special Committee whose tasks and capabilities are not outlined in this but in the following section, there is the *Committee on Foreign Affairs* (AFET), and especially its *Subcommittee on Security and Defence* (SEDE), which currently comprises 31 members.¹⁸⁵ However, neither of the latter two is provided with the necessary staff, resources and conditions to effectively engage in the oversight of the EU's intelligence bodies. Thus, while AFET is broadly mandated to oversee the High Representative on her conduct of the CFSP and EEAS, it thereby rarely focuses on her conduct of intelligence activities specifically, as its mandate is so broad.¹⁸⁶ Overall, AFET apparently does not even perceive intelligence oversight as its task. Equally, SEDE also barely focuses on intelligence oversight because, as a subcommittee, it has to follow the priorities of scrutiny set by AFET.¹⁸⁷ Additionally, AFET's and SEDE's meetings are generally held in public and only in exceptional cases *in camera*.¹⁸⁸ However, members of the EU intelligence bodies are fairly unlikely to discuss sensitive intelligence information in a public forum.¹⁸⁹

In the field of AFSJ, the oversight responsibility is likely to fall within the scope of the *Committee on Civil Liberties, Justice and Home Affairs* (LIBE), responsible for the protection of citizens' rights, transparency, the protection of personal data, and police and judicial

¹⁸⁵ **EUROPEAN PARLIAMENT** (2011a): 'Rules of Procedure of the European Parliament'. ANNEX VII: Powers and responsibilities of standing committees, section I. Committee on Foreign Affairs; **EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE** (2012): 'Providing parliamentary accountability over EU's Common Security and Defence Policy'. European Parliament, SEDE, 7th Legislative Period (2009-2014), p.8; **EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE** (2009b): 'Reports on Activities 2004-2009', p.14.

¹⁸⁶ Ibid. p.10.

¹⁸⁷ **BORN, ANGHEL, DOWLING and FUIOR** (2008): 'Parliamentary Oversight of ESDP Missions', p.12.

¹⁸⁸ **BORN, ANGHEL, DOWLING and FUIOR** (2008): 'Parliamentary Oversight of ESDP Missions', p.12f.

¹⁸⁹ Ibid.

cooperation.¹⁹⁰ However, like AFET, LIBE is unlikely to give intelligence oversight the necessary attention as its mandate is very general and broad.

To conclude, several flaws can be found with regard to the EP's committees engaging in intelligence oversight. Unlike identified as good oversight practice, the EP executes intelligence oversight not in specialised committees focusing exclusively on intelligence oversight, but through general parliamentary committees.¹⁹¹ Their members are 'normal' parliamentarians and therefore likely to lack the necessary expertise in intelligence to conduct thorough oversight.¹⁹² Furthermore, AFET, LIBE and SEDE are tasked with the oversight of a multitude of other topics, so that intelligence is possibly not given the necessary focus. Overall, the EP is thus not provided with the ideal resources for engaging in effective intelligence oversight.

4.2.2 The EP's access to classified information

Having examined the EP's committees likely to be used to engage in the oversight of the EU intelligence bodies, this section focuses on a further point determining their effectiveness: access to classified information.

As mentioned above, a necessary precondition for effective parliamentary oversight is that the parliament has sufficient access to (probably classified) information about the intelligence body's activities.¹⁹³ Accordingly, the EP would be best able to scrutinise the EU intelligence bodies in depth if it had the right to request all information on all topics it deems rele-

¹⁹⁰ **EUROPEAN PARLIAMENT** (2011a): 'Rules of Procedure of the European Parliament'. ANNEX VII: Powers and responsibilities of standing committees, section XVII, Committee on Civil Liberties, Justice and Home Affairs; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.67.

¹⁹¹ Ibid, p.162.

¹⁹² Ibid, p.89.

¹⁹³ **GREENWOOD, HUISMAN** (2004): *Transparency and Accountability of police forces*, p.11.

vant, and if the intelligence bodies had to comply with all information requests.¹⁹⁴ However, the intelligence bodies equally have a valid interest in keeping certain information secret in order to protect sensitive sources, methods, or ongoing operations which would become ineffective if they were publicly known.¹⁹⁵ Therefore, the intelligence bodies' needs for secrecy have to be carefully balanced against the parliament's needs for transparency to enable both to effectively engage in their tasks.¹⁹⁶ The question assessed below is therefore whether the regulations granting the EP access to classified information on EU intelligence activities are broad enough that it can engage in effective parliamentary oversight.

The EP's access to information in CFSP

To begin with, the EP's access to classified information in the realm of CFSP is examined. In 2001, the EU introduced the classification levels "TOP SECRET UE", "SECRET UE", "CONFIDENTIEL UE" and "RESTREINT UE" to improve the protection of its sensitive information.¹⁹⁷ Most information on EU intelligence activities falls within one of these classification levels and is therefore not easily accessible for members of the EP.¹⁹⁸ Instead, the EP's access to such classified documents has to be regulated in inter-institutional arrangements

¹⁹⁴ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.121.

¹⁹⁵ **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.33f; **BALDINO** (2010a): 'Introduction: Watching the Watchman', p.14.

¹⁹⁶ **CAPARINI**, Marina (2007): 'Controlling and Overseeing Intelligence Services in Democratic States' in: BORN, Hans and Marina CAPARINI (Eds., 2007): *Democratic Control of Intelligence Services – Containing Rogue Elephants*. Ashgate Publishing Limited, Farnham, UK, p.4; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.4; **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.3.

¹⁹⁷ **COUNCIL OF THE EUROPEAN UNION** (2001b): 'Council Decision adopting the Council's security regulations'. Brussels, 28 February 2001, 5775/01, Section II, p.16.

¹⁹⁸ **COUNCIL OF THE EUROPEAN UNION** (2012c): 'Breakdown of documents by security classification levels'. Answer to written question E-004374/2012 put by Martin Ehrenhauser, Brussels, 2 July 2012; **EUROPEAN COMMISSION** (2012j): 'Intelligence Division (INT) – products and information'. Answer to question E-006022/2012, 24 August 2012.

with whichever EU body holds the documents.¹⁹⁹ This was done in inter-institutional arrangements between the EP and the Council in 2002, and the EP and the Commission in 2005 and 2010.²⁰⁰

Being an independent but joint institution of the Commission and Council, the EEAS has a "hybrid status". Therefore, it was to begin of its activities in 2011 unclear whether the EP's access to EEAS' classified documents – and thereby to information relating to the CFSP intelligence bodies SatCen, IntDir and IntCen – would be regulated by the provisions of the inter-institutional agreement with the Council, or with the Commission.²⁰¹ However, by now, it seems clear that the EP's access to EEAS' information is granted by its arrangement with the Council, which unfortunately includes the more restrictive provisions.²⁰² In this inter-institutional arrangement, the EP is granted access to secret information on a 'need-to-know' basis: the EP may access such information "where it is required for the exercise of the powers conferred to the European Parliament", but for no other reason.²⁰³ Thus, the EP's access to classified information depends on which functions and tasks it has in a given policy area. Unfortunately, in the CFSP legislative procedure, the EP has only very limited responsibilities: it only needs to be consulted, while the Council alone has the authority to

¹⁹⁹ **EUROPEAN PARLIAMENT AND COUNCIL** (2001): 'Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents' of 30 May 2001, principle 9.

²⁰⁰ **EUROPEAN PARLIAMENT AND COUNCIL** (2002): 'Inter-institutional agreement between the European Parliament and the Council concerning access by the European Parliament to sensitive information of the Council in the field of security and defence policy' of 20 November 2002, Article 3(3); **EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE** (2009b): 'Reports on Activities 2004-2009', p.13.

²⁰¹ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.73.

²⁰² This was deduced from the High Representative's statement that the EEAS "has actively developed arrangements for sharing of sensitive information with the Parliament through the Special Committee of security cleared MEPs" which is a body established between the EP and the Council and regulated within the Council's 2002 inter-institutional arrangement. **ASTHON, Catherine** (2011): 'Report by the High Representative to the European Parliament, the Council and the Commission'. European External Action Service, 22 December 2011, paragraph 8.

²⁰³ **EUROPEAN PARLIAMENT AND COUNCIL** (2002): 'Inter-institutional agreement between the European Parliament and the Council', Article 3(3); **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.117.

legislate.²⁰⁴ Accordingly, its 'need-to-know' is equally very restricted in CFSP, and therefore the EP's committees AFET and SEDE are granted virtually no access at all to classified information on CFSP intelligence activities.

In practice, this lack of information amounts to the EP's "greatest impediment to effective oversight", as it makes the in-depth scrutiny of the CFSP bodies' activities or performance impossible or useless due to the lack of data.²⁰⁵ However, the cause of this restricted information access is also partly to be found within the EP itself, as it "has not yet adopted the necessary information security standards" that the Council set as a precondition for information sharing, even though it has been invited several times to do so.²⁰⁶

The EP's Special Committee

The previous section outlines why the members of the EP in AFET and SEDE usually have no access to classified information in the realm of the CFSP. However, for five security-cleared parliamentarians, there is an exemption from this rule as they are members of the so-called *Special Committee*.

The Special Committee was established on the basis of the inter-institutional arrangement between the Council and the EP and meets every six weeks with the High Representative.²⁰⁷ It comprises the three chairmen of AFET, SEDE, and DROI (the second of AFET's subcommittees, focusing on Human Rights) plus two other members of the EP chosen by all political

²⁰⁴ **CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 36 TEU.

²⁰⁵ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.165 and 81.

²⁰⁶ *Ibid*, p.81.

²⁰⁷ **ASTHON, Catherine** (2011): 'Report by the High Representative to the European Parliament, the Council and the Commission'. European External Action Service, 22 December 2011, paragraph 8.

groups.²⁰⁸ At the request of AFET's chairman, the High Representative should inform these five parliamentarians of the content of classified CFSP documents.²⁰⁹ Hence, the Special Committee is "currently the only mechanism available to the EP" for truly discussing the CFSP intelligence bodies' activities on the basis of classified information.²¹⁰

However, the theoretical access to classified information provided to the Special Committee is for several reasons not sufficient for effective intelligence oversight. Firstly, the Committee's members are not chosen on the basis of their expertise in intelligence oversight, but for political seniority.²¹¹ Accordingly, they have been criticised for rarely asking the necessary questions.²¹² Secondly, the parliamentarians are "prevented from discussing any of the intelligence they receive outside of their narrow group".²¹³ However, as there are only five members, they hardly have the personnel strength to engage in thorough intelligence oversight.²¹⁴ Thirdly, they are in practice not really provided with access to all classified documents in CFSP: instead, they are mostly informed orally of the content of documents by the High Representative.²¹⁵ Additionally, the High Representative and the Council have "the right to deny the EP any information [they] consider[] inappropriate to share", thus effectively retaining the choice of which information to disclose, and being somewhat able to influence

²⁰⁸ **EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE** (2009b): 'Reports on Activities 2004-2009', p.13.

²⁰⁹ **EUROPEAN PARLIAMENT AND COUNCIL** (2002): 'Inter-institutional agreement between the European Parliament and the Council', Article 3(3); **BORN, ANGHEL, DOWLING and FUIOR** (2008): 'Parliamentary Oversight of ESDP Missions', p.12f.

²¹⁰ *Ibid.*; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.167f.

²¹¹ *Ibid.*

²¹² *Ibid.*

²¹³ **CROSS** (2011): 'EU intelligence sharing', p.14.

²¹⁴ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.168.

²¹⁵ *Ibid.* p.71.

the Committee's focus, depending on which information they provide them with.²¹⁶ Also, the High Representative has to inform the Committee only when so requested by AFET's chairman. However, as the parliamentarians are unlikely to even be aware of certain documents requiring their oversight, they cannot and do not ask to be informed about them.²¹⁷ Finally, this also means that the Committee's effectiveness and focus depends strongly on the engagement and interests of AFET's chairman. Thus, as IntCen "has not been viewed as a priority for the AFET Committee", it was, as of 2010, not discussed by the Special Committee.²¹⁸

To conclude, even though it provides one opportunity for some members of the EP to gain access to classified information about the CFSP intelligence bodies, the Special Committee is hardly provided with the ability and authority to effectively engage in their continuous and in-depth oversight. In addition, the necessary attitude also seems to somewhat lack. Accordingly, its oversight performance is not discussed in further detail in the following sections.

The EP's access to classified information in AFSJ and to public information

Similarly to the process outlined for the EP's access to CFSP classified information, the EP is also granted access to AFSJ information on the basis of the inter-institutional arrangements with the Council and Commission. However, the EP's 'need to know' is much more extensive in AFSJ than in CFSP as it has full co-responsibility in the AFSJ legislative procedure. There-

²¹⁶ In analogy to **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.126; **BORN**, ANGHEL, DOWLING and FUIOR (2008): 'Parliamentary Oversight of ESDP Missions', p.12f.

²¹⁷ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.126.

²¹⁸ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.168.

fore, its access to classified documents on the AFSJ intelligence bodies is much easier.²¹⁹ One could, however, criticise the fact that, as information access is also based on various fragmented inter-institutional agreements, there is still a lack of "clear and predictable rules and procedures for the EP to access relevant information" on AFSJ activities.²²⁰

To conclude, the EP's members meet some difficulties when using classified information for oversight of the EU intelligence bodies of both CFSP and AFSP. Therefore, it makes sense for them to additionally base their oversight on publicly-available information. Indeed, SatCen, IntDir, Europol and Frontex each run their own official website, providing to different degrees information on their tasks as well as contact details for information requests.²²¹ The AFSJ agencies' websites include the most extensive amount of information in this respect. Additionally, SatCen, Europol and Frontex issue publicly-accessible reports on their budget and staff numbers, their annual activities, and their legal frameworks, while SatCen and Europol even provide edited public versions of some of their products.²²² Finally, while IntDir's activities are only superficially outlined on its website, its staff members write articles for the EUMS's *Impetus* journal that contain a reasonable amount of information on its working procedures.²²³ To conclude, the publicly-available information on SatCen, IntDir, Europol and Frontex provide valuable additions to the secret information and fairly allow the interested public and the EP's members to form their own opinion with regard to their activities.

²¹⁹ HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.508f; WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.74.

²²⁰ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.155.

²²¹ EUROPEAN UNION SATELLITE CENTRE MAIN WEBPAGE; EUROPEAN UNION MILITARY STAFF MAIN WEBPAGE; see for example EUROPOL TE-SAT 2012: 'EU Terrorism Situation and Trend Report 2012', as published on the EUROPOL WEBPAGE; FRONTEX MAIN PAGE.

²²² DEN BOER, HILLEBRAND, NÖLKE (2008): 'Legitimacy under pressure', p.112.

²²³ See IMPETUS – BULLETIN OF THE EU MILITARY STAFF.

By contrast, IntCen receives much critique for its complete lack of transparency: it provides neither a website, nor are its mandate, staff and budget, annual reports or other information publicly available.²²⁴ Being thus "unusually secretive, even in comparison to national intelligence agencies", even the EP's members have to speculate on its tasks and activities, leading to IntCen's image as a "potential European CIA".²²⁵ Hence, as IntCen does not provide any public information and as the EP equally has no access to its classified information, the EP likely has *de facto* not the ability to thoroughly oversee its activities.²²⁶

To conclude, as the EP is not provided with the necessary resources and has, especially in the realm of CFSP, not the authority to access classified information, it likely will encounter some difficulties while trying to oversee the EU intelligence bodies. By examining the EP's actual performance in overseeing specific issues, the sections below will therefore assess whether this assumption is warranted.

4.2.3 The oversight role of the National Parliaments

In addition to the EP, the NPs should ideally be involved in the parliamentary oversight of the EU intelligence bodies, as there are various aspects that are easier to oversee from a national level than by the EP. For example, the NPs should oversee cases where the Member

²²⁴ **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56; **CROSS** (2011): 'EU intelligence sharing', p.3.

²²⁵ Ibid. p.14; **expatica** (2010): 'French diplomat to head EU intelligence agency'. Expatica.com, news and information for the international community, French news archive, 27 July 2010; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.57f.

²²⁶ **VAN BUUREN** (2009): 'Secret Truth. The EU Joint Situation Centre', p.18; **DEN BOER**, HILLEBRAND, NÖLKE (2008): 'Legitimacy under pressure', p.115.

States directly fund the EU intelligence bodies from their national budgets, and the activities of their seconded national agents, as both of these are regulated by national laws.²²⁷

In recognition of this need for the NPs' participation, the EU Treaties do require the NPs to help with overseeing the EU intelligence bodies, and explicitly so for Europol.²²⁸ There are three main possible ways in which the NPs can oversee the EU intelligence bodies. Firstly, some NPs have the authority to directly scrutinise the EU intelligence bodies' activities – for example, the British Parliament issues reports on Europol, has interviewed its directors, and visited its premises.²²⁹ However, the NPs are generally more interested in themes directly affecting their national electorate, and therefore only focus on the EU intelligence bodies on an *ad hoc* basis instead of providing systematic scrutiny.²³⁰ Additionally, as their 'need-to-know' is even more limited, the EU bodies holding classified information on the EU intelligence activities are unlikely to provide them to the NPs.

Secondly, the NPs could indirectly ensure the EU intelligence bodies' democratic accountability by pressuring their governments to take a particular stance in the EU decision-making bodies, like the Council, when discussing EU intelligence-related issues.²³¹ However, this method can only be effective if the NPs have reasonable advance warning of the issues likely to be debated, as the NPs have to first find their own stance on the theme if they want to

²²⁷ HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.509; WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.147f.

²²⁸ CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (2010) as amended by the Lisbon Treaty, Article 88(2)TFEU; COUNCIL OF THE EUROPEAN UNION (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 33.

²²⁹ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.66.

²³⁰ Ibid.; in analogy to MÜLLER-WILLE (2006): 'Intelligence and democratic accountability', p.497f.

²³¹ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.66.

persuade their governments according to their will.²³² However, this is, especially on security-related topics like intelligence and defence, quite unlikely. Therefore, the NPs are ultimately probably not very effective in influencing their governments' position in the Council. Hence, this indirect oversight might be weak, too.

Finally, the NPs can improve EU intelligence oversight by providing the EP with the information received during the oversight of their national intelligence services. To improve this cooperation, the EP periodically upholds various inter-parliamentary meetings of the EP and NPs: for example, LIBE annually invites national parliamentarians to discuss the AFJS bodies, and AFET and SEDE organise meetings on foreign affairs and defence matters.²³³ Unfortunately, these forums are somewhat ineffective, as they rarely focus explicitly on the intelligence functions of the EU bodies, are not permanently standing and can thus not engage in continuous oversight, and because the great number of participating parliaments makes coordination very difficult.²³⁴ Additionally, the NPs were criticised for not engaging thoroughly in this cooperation because they fear a "power drain from the national to the EU level".²³⁵

To conclude, several flaws can be identified in the NPs' abilities to oversee EU intelligence: they often lack the will to engage in depth on EU intelligence oversight, but neither are they provided with the necessary resources nor information access to make an effective contribu-

²³² **EUROPEAN COMMISSION** (2002): 'Democratic Control over Europol'. Communication from the Commission to the European Parliament and the Council, COM(2002) 0095 final, paragraph 3.2.2.

²³³ **EUROPEAN PARLIAMENT** (2007b): 'Report on the annual report from the Council to the European Parliament on the main aspects and basic choices of CFSP, including the financial implications for the general budget of the European Communities'. Committee on Foreign Affairs, A6-0130/2007, European Parliament of 2004-2009. 4 April 2007, paragraph 48 (b), p.13; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.67; **BORN, ANGHEL, DOWLING and FUIOR** (2008): 'Parliamentary Oversight of ESDP Missions', p.14.

²³⁴ **HILLEBRAND** (2011): 'Guarding EU-wide counter-terrorism policing', p.513.

²³⁵ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.147f.

tion. Nevertheless, the following sections assess the NPs' actual oversight performance on specific issues related to the oversight of the EU intelligence bodies.

4.3 Specific issues of parliamentary EU intelligence oversight

Having in the previous sections outlined the general oversight resources and capabilities of the EP and the NPs, the following sections examine specific issues related to the parliamentary oversight of the EU intelligence bodies to determine their respective authority and will to engage in effective oversight.

4.3.1 Mandates of the EU intelligence bodies

"Democratic control of intelligence services begins with a clearly defined legal framework", that is, a mandate.²³⁶ According to MÜLLER-WILLE, "the mandate is central from an accountability perspective" as it defines what the EU intelligence body may or may not do.²³⁷ Accordingly, without a clear legal framework, it becomes very difficult to oversee an intelligence body as there is "no reference point" against which to measure the body's acts.²³⁸

The institution with the authority to define the mandate's content has a very great influence on the intelligence body, as it can determine which activities it is allowed to engage in. Therefore, in order to ensure that the tasks and responsibilities accorded to the EU intelligence bodies represent the public will, it is deemed very important that the EP or NPs have the authority to influence the formulation of their respective mandates.²³⁹ This co-

²³⁶ **DCAF Backgrounder** (2006a): 'Intelligence Services', March 2006, p.4.

²³⁷ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.110.

²³⁸ **SCHREIER** (2007): 'The need for efficient and legitimate intelligence', p.42.

²³⁹ **LEIGH** (2005): 'More closely watching the spies', p.6; **BORN, JENSEN** (2007): 'Intelligence services: strengthening democratic accountability', p.263f.

responsibility would furthermore prevent the executive institutions from changing the intelligence bodies' tasks or limits according to short-term political opportunity.²⁴⁰

The CFSP intelligence bodies' mandates

First, the mandates of the three CFSP intelligence bodies are examined for whether they were formulated under parliamentary participation. SatCen's legal framework is fixed by a *Council Joint Action* last amended in 2011.²⁴¹ While the mandate is publicly available and quite clear in defining SatCen's responsibilities, limits and oversight, the Council alone determined its content while the EP lacked the necessary authority.

The same applies to IntDir: its responsibilities are outlined in the mandate of its parent body, the EUMS, which is a *Council Decision* of 2008.²⁴² As the EP needs only to be consulted on Decisions in the realm of CFSP, the Council is *de facto* again the sole responsible party for defining IntDir's legal framework. In addition, IntDir's activities are defined in the framework in only very little detail.

Finally, IntCen has not been provided with any legal framework whatsoever, but its tasks are unofficially set by the Council and the High Representative.²⁴³ The reason for this omission is thought to lie in the mistrust of the large EU Member States: according to MÜLLER-WILLE, "all Member States would be entitled to second their analysts to the centre" if IntCen was to be

²⁴⁰ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41.

²⁴¹ COUNCIL OF THE EUROPEAN UNION (2011d): 'Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action 2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011.

²⁴² COUNCIL OF THE EUROPEAN UNION (2001d): 'Council Decision on the establishment of the Military Staff of the European Union'. 5382/01, Brussels, 19 January 2001;

²⁴³ WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.56.

provided with a legal basis.²⁴⁴ However, as it was outlined in section 3.3, the privileged states prefer to have a choice of whom to accept into their circle, in order to protect their shared intelligence. Therefore, they allegedly deliberately abstain from issuing a legal basis to IntCen.²⁴⁵ This complete lack of a legal basis is of course a grave obstacle to IntCen's oversight, as there is no reference point to determine whether it is acting according to its limits.²⁴⁶ Furthermore, this absence of a written legal mandate might become an issue as soon as the EU accedes to the jurisdiction of the *European Court of Human Rights* (ECtHR) as is provided for in the Lisbon Treaty²⁴⁷, because the ECtHR has already ruled, in 1987, that intelligence bodies need to be provided with "clear, foreseeable, and accessible" legal rules.²⁴⁸

To conclude, the EP is completely prevented from effectively influencing the mandates of the three CFSP intelligence agencies, as it is not provided with the necessary authority. Unfortunately, the NPs are no better able to decide the mandates' content: while they theoretically have the power to indirectly influence the provisions by prescribing their Foreign Ministers how to vote in the relevant Council's debate, in practice they apparently

²⁴⁴ MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.112.

²⁴⁵ MÜLLER-WILLE (2006): 'Intelligence and democratic accountability', p.496f.

²⁴⁶ Ibid. p.496.

²⁴⁷ The ECtHR is the judicial body of an international organization distinct from the EU, the European Council. However, via Article 6(2) TEU, the Lisbon Treaty provided the EU with the duty to accede to its jurisdiction. Then, the ECtHR will be competent to review all actions of the EU bodies on whether they are in accordance with the rights of the *European Convention on Human Rights*. While in June 2011, a draft agreement on the EU's accession was finished, the ratification stalled since then, as Great Britain and France apparently object to the accession for political reasons. See **CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 6(2). It was equally necessary to add Article 59 (2) ECHR to the European Convention on Human Rights according to which "the European Union may accede to this Convention", which was done in Protocol No.14 of 1 June 2010. See **EUROPEAN CONVENTION ON HUMAN RIGHTS - PROTOCOL 14** (2010), entered into force 1 June 2010, Article 17 (1); **COUNCIL OF EUROPE PRESS RELEASE** (2012b): 'EU accession to the European Convention on Human Rights: "the momentum must not be lost" says joint parliamentary body'. Press release, Strasbourg, 19 June 2012, AP115(2012); **COUNCIL OF EUROPE PRESS RELEASE** (2012a): 'European parliamentarians "deeply concerned" at national moves to block EU accession to the European Convention on Human Rights'. Press release, Strasbourg, 25 January 2012, AP018(2012).

²⁴⁸ In analogy to LEIGH (2005): 'More closely watching the spies', p.5; TODD, BLOCH (2003): *Global Intelligence – The World's Secret Services today*, p.227f.

lack the necessary influence on their governments.²⁴⁹ Thus, the parliamentary influence on the CFSP intelligence bodies' mandates is virtually non-existent.

The AFSJ intelligence bodies' mandates

In a second step, the parliament's influence on the AFSJ agencies' mandates is assessed. Until 2009, Europol was based on a treaty signed between the Member States. This changed in 2009 when its responsibilities were determined in great detail in an AFSJ *Council Decision*.²⁵⁰ Unlike for CFSP Decisions where the EP is only consulted, the EP had in 2009 the right to assent or dissent to AFSJ Decisions. Thus, to enter into force, Europol's current mandate had to find the assent of the EP. Accordingly, the EP had a chance to slightly influence the mandate's content by threatening not to assent to it otherwise.

However, in 2009, the Lisbon Treaty amended the AFSJ legislative procedure. Thus, the EP has since then been fully co-responsible in AFSJ acts and can, for the first time, propose its own amendments to legislative texts. Being in 2009 aware of this coming increase in the EP's capabilities, the Member States allegedly adopted Europol's current mandate deliberately just before the Lisbon Treaty came into force in order to prevent the EP's full influence.²⁵¹ However, a new mandate for Europol is planned for 2013, in which the EP will be able to execute its new co-responsibility.²⁵²

By contrast, Frontex's legal framework, a very detailed *Regulation* of 2011, has already been adopted in accordance with the new legislative procedure, under the full co-responsibility of

²⁴⁹ **BONO**, Giovanna (2006): 'Challenges of democratic oversight of EU security policies' in: *European Security*, Vol.15, No.4, p.442.

²⁵⁰ **WALSH** (2009): 'Security Policy and Intelligence Cooperation', p.8; **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)'.

²⁵¹ **RIPOLL-SERVENT** (2010): 'Point of no return? The European Parliament after Lisbon', p.507.

²⁵² **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.44.

EP and Council.²⁵³ However, RIPOLL-SERVENT argues that, instead of taking this chance to introduce strong regulations to improve the parliamentary oversight of Frontex, the EP abstained from proposing strict oversight as it wants to prove itself to the Council as a 'responsible' actor.²⁵⁴

To conclude, the EP's influence on the AFSJ intelligence bodies' mandates is in theory very good as the Lisbon Treaty provided it with the necessary authority to co-responsibly determine their content. However, this legal power is not yet implemented in practice: on the one hand, the currently valid mandate of Europol was still subject to the old legislative procedure and only assented by the EP. On the other hand, the EP apparently lacks the will to enforce stronger oversight means and instead seems to follow the more restrictive example of the Council. This shows that having the necessary authority does not automatically lead to stronger parliamentary oversight.

4.3.2 Parliamentary oversight of the EU intelligence budget

Having outlined the parliamentary influence on the EU intelligence bodies' mandate, this section focuses on their budgetary control. In this work, budgetary control is used to refer to two activities: on the one hand, the determination of the budgets' appropriate size, and on the other hand, the control of whether the provided money is spent usefully and according to its purpose.²⁵⁵

As intelligence bodies are generally funded by public money, it is deemed very important that parliaments have, as representatives of the taxpayers' will, the authority to determine

²⁵³ EUROPEAN PARLIAMENT AND COUNCIL (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/1.

²⁵⁴ RIPOLL-SERVENT (2010): 'Point of no return? The European Parliament after Lisbon', p.196 and 203.

²⁵⁵ See in analogy MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.114.

the amount and purpose of money accorded to the intelligence bodies.²⁵⁶ Accordingly, the EP should be responsible for the budgetary control of contributions paid to the EU intelligence bodies from the official EU budget, and the NPs for the respective amounts stemming from national funds.

The CFSP intelligence bodies' budgets

To begin with, the parliamentary control of the CFSP budgets is examined. SatCen is directly financed by contributions from the Member States, plus payments of third partners for its intelligence products.²⁵⁷ Thus, being independent from the official EU budget, the EP has no say in SatCen's budget. Instead, SatCen's *Management Board* decides the amount of money SatCen receives and also discharges, on the basis of the report of its own "independent financial controller", for its correct use.²⁵⁸ As the Board is composed of representatives of the Member States, the NPs are ultimately responsible for the budgetary control of their provisions. However, as the individual amounts of national money paid to SatCen are rather modest, they do in practice not pay much attention to them.²⁵⁹ Consequently, SatCen's use of public money is *de facto* not overseen by a parliament.

²⁵⁶ Ibid; BORN (2007): 'Parliamentary and external oversight', p.172; **CONSOLIDATED VERSION OF THE TREATY ON EUROPEAN UNION** (2010) as amended by the Lisbon Treaty, Article 14(1) TEU.

²⁵⁷ **COUNCIL OF THE EUROPEAN UNION** (2011d): ' Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action 2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011, Article 12(3), p.4.

²⁵⁸ **COUNCIL OF THE EUROPEAN UNION** (2011d): ' Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action 2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011, Articles 13 and 14, p.5.

²⁵⁹ MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.114.

Meanwhile, IntDir and IntCen are funded by both EU and national public money: formally, IntDir's and IntCen's budget are part of the EEAS budget.²⁶⁰ As the EEAS falls within the EP's budgetary responsibility, the EP is in theory entitled to determine the amount of money IntDir and IntCen receive from EU funds and also to discharge its correct use after the EEAS budget has been audited by the *EU Court of Auditors*.²⁶¹ However, for three reasons, the EP in practice does not engage in effective budgetary control of IntCen's and IntDir's budget despite being legally responsible. Firstly, IntDir's and IntCen's budgets are apparently not explicitly outlined within the EEAS's budget plan and auditing report.²⁶² Therefore, the EP does not have the necessary authority to freely determine the amount of money they receive. Secondly, the EP also seems to lack the necessary will to do so, as it does not demand to be informed explicitly on IntCen's and IntDir's budget and use.²⁶³ Finally, only a small portion of IntDir's and IntCen's overall budget stems from the EU. Therefore, again, the EP seems to not be interested in thoroughly scrutinising such comparably very modest amounts.

Instead, the majority of IntCen's and IntDir's budget stems from national funds. The reason for this is that, as already mentioned, a considerable part of IntCen's and IntDir's staff are seconded national agents – 39 out of 41 staff members for IntDir and about 70 per cent for IntCen – who are paid directly from national budgets.²⁶⁴ Accordingly, the NPs are *de facto*

²⁶⁰ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012; **EUROPEAN COMMISSION** (2012d): 'EU Intelligence Analysis Centre (INTCEN)'. Answer to question E-006017/2012, 25 July 2012.

²⁶¹ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.114.

²⁶² **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012.

²⁶³ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.114.

²⁶⁴ **EUROPEAN COMMISSION** (2012e): 'Intelligence Division (INT)'. Answer to question E-006027/2012, 7 August 2012; **EUROPEAN COMMISSION** (2011a): 'Intelligence Division (INT)'. Answer to question E-006392/2011, 12 August 2011; **VAZ ANTUNES** (2007): 'Developing an Intelligence Capability'; Dieter Haag and Carlos Bernardo Anaya as cited in **IMPETUS – BULLETIN OF THE EU MILITARY STAFF** (2011), Spring/Summer 2011, Issue 11, p.8;

better situated for their budgetary control. However, again they are apparently not interested in minutely controlling these relatively small amounts of money.²⁶⁵

To conclude, for all three CFSP intelligence bodies, both the determination of the amount of money and the auditing on its effective use is *de facto* exercised without parliamentary control. This is partly because the EP lacks the necessary authority as it cannot control SatCen's entire and major parts of IntDir's and IntCen's budget. However, both the EP and NPs also lack the will to effectively engage in scrutiny where they are legally entitled to.

The AFSJ intelligence bodies' budgets

In a second step, the AFSJ budgets are examined. Unlike the CFSP intelligence bodies, both AFSJ bodies are official EU agencies and are thus financed from the general EU budget.²⁶⁶ For both Europol and Frontex, the respective Director and *Management Board* propose an annual budget whose specific amount is, since the Lisbon Treaty, jointly accepted by the Council and the EP.²⁶⁷ Equally, the EP is responsible for discharging Europol's and Frontex's Director for the correct implementation of the budget, based on the recommendation included in the auditing report of the *EU Court of Auditors*.²⁶⁸ Unlike the EEAS budget, Europol's and Frontex's budget is thereby subject to very thorough and detailed scrutiny by the EP, which has "formidable budgetary powers" over Europol and Frontex.²⁶⁹

RETTMAN, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.114.

²⁶⁵ Ibid.

²⁶⁶ COUNCIL OF THE EUROPEAN UNION (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 42.

²⁶⁷ Ibid. Article 37; COUNCIL OF THE EUROPEAN UNION (2004): 'Council Regulation...', *Frontex Regulation*, Article 29; EUROPOL WEBPAGE: 'Management'.

²⁶⁸ COUNCIL OF THE EUROPEAN UNION (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 43; COUNCIL OF THE EUROPEAN UNION (2004): 'Council Regulation...', *Frontex Regulation*, Article 30.

²⁶⁹ Following the proceedings of CONSOLIDATED VERSION OF THE TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION (2010) as amended by the Lisbon Treaty, Articles 310 – 324 TFEU; WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH

To conclude, as the AFSJ budgets are effectively controlled by the EP, no flaws can be identified with regard to the parliamentary oversight of their use of public money.

4.3.3 Parliamentary oversight of data-protection regulations and information-sharing

In this section, a third question requiring particular attention when overseeing intelligence is the use of personal data, meaning "information about a given individual" such as their contact details, date of birth, and information on their private life or political beliefs.²⁷⁰ The abuse or unwarranted disclosure of such information may be very hampering to this person's private life, employment or even overall well-being.²⁷¹ Therefore, it is highly necessary firstly to provide intelligence bodies handling personal data with clear regulations on what types of personal data may be collected, when they may be used, how long they may be retained, who has access to them and with whom they may be shared, and secondly to effectively ensure that these data protection provisions are complied with.²⁷²

As representatives of the public will, parliaments should be able to determine the basic choices of the named data protection provisions and information-sharing agreements of the EU intelligence bodies engaging in the use of personal data as this reflects the EU's overall stance on citizen and human rights.²⁷³ Equally, the parliaments should engage in their control to a degree that general flaws can be identified, discussed, and ideally solved. However, as it would likely overstretch their capacities, the parliaments should not have to

(2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.81;
HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.508f.

²⁷⁰ **WILLS** (2011): *Guidebook: Understanding Intelligence Oversight*, p.21f.

²⁷¹ Ibid.

²⁷² Ibid. **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.113.

²⁷³ Ibid, p.109.

scrutinise each bit of shared information or personal data with regard to its correct use.²⁷⁴

This is rather incumbent on executive or internal oversight bodies.

Of the EU intelligence bodies, only two are officially entitled to process personal data: Europol and Frontex.²⁷⁵ Thus, Europol's *Analytical Work Files* contain sensitive data on victims and criminal suspects, while Frontex has at its disposal personal data on illegal immigrants entering the EU.²⁷⁶ In their mandates, both were provided with fairly strict limits on the processing and use of this information; for example, Frontex has to depersonalise all data used in its risk analyses.²⁷⁷ Equally, both issued various internal codes of conduct to implement human rights and personal data protection.

As outlined above, the EP had some influence on the mandates' and other regulations' content and is also likely to have influenced the included data protection provisions. Also, as LIBE's main task is the protection of civil liberties and rights, it engages in the scrutiny of their actual implementation. However, as LIBE was rightly not provided with full access to the personal data processed by Europol and Frontex, it cannot really oversee on a case-by-case basis whether they are used according to the data protection provision, but can only see general trends like their storage. Similarly, while Europol informs the EP about the fact that a new sharing agreement was concluded, the EP is not provided with the authority to scrutinise its content or oversee its implementation in practice.²⁷⁸ Therefore, it would be very sensible for LIBE if it was to benefit from the insights of other oversight actors, like

²⁷⁴ Ibid, p.113f.

²⁷⁵ Ibid, p.60.

²⁷⁶ Ibid, p.47; PEERS, Steve (2003): 'EU responses to terrorism' in: *International and Comparative Law Quarterly*, Vol.52, January 2003, p.238.

²⁷⁷ **FRONTEX MAIN PAGE**: 'Operational Analysis'.

²⁷⁸ **HILLEBRAND** (2011): 'Guarding EU-wide counter-terrorism policing', p.509; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.75, 49 and 155; **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)', Articles 34 and 27.

internal and executive bodies, that have better information access on the use of personal data and information sharing. For example, the *Joint Supervisory Body* (JSB) of Europol is such a body.

The JSB oversees the processing of personal data by Europol. It is composed of two representatives of each Member State's national body tasked with supervising the national inputs to Europol.²⁷⁹ The JSB meets four times a year *in camera* to confidentially discuss Europol's use of personal data, but also acts as an appellate body for persons who request access, correction, or deletion of data from Europol's files.²⁸⁰ It is proactively supplied by Europol with all documents and data in its possession and may carry out ad hoc inspections of all Europol premises where personal data is being processed.²⁸¹ If the JSB thereby identifies violations of the data protection provisions, it issues propositions of how to solve the issues, which are "nearly always implemented".²⁸² Equally, the JSB issues an opinion to Europol's Management Board prior to the conclusion of an information-sharing agreement on whether the future partner "maintains an adequate level of data protection".²⁸³ Finally, on the basis of its insights, the JSB provides very detailed biannual reports that raise issues requiring further attention and identify ongoing flaws in Europol's processing of personal data.

²⁷⁹ **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision of 6 April 2009 establishing the European Police Office (Europol)'. In text referred to as *Europol Decision*, Articles 33 and 34.

²⁸⁰ **JOINT SUPERVISORY BODY OF EUROPOL** (2009): 'Act No 29/2009 of the Joint Supervisory Body of Europol of 22 June 2009 laying down its rules of procedure', Article 6(1); **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)', Articles 30(7) and 32; **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.62f.

²⁸¹ Ibid.

²⁸² Ibid.; **HUSTINX**, Peter J. (2005): 'Speech at Farewell of Data Protection Commissioner of Sachsen-Anhalt', Magdeburg, 11 April 2005.

²⁸³ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.60f.

As outlined above, it would be very sensible practice for the EP to use these reports on data protection or information-sharing agreements for its own oversight. However, the JSB's reports have "attracted surprisingly little interest from the EP", and the EP has never invited JSB members to discuss the weaknesses found.²⁸⁴

To conclude, while already provided with some authority, the EP apparently lacks the will to engage in in-depth parliamentary oversight of some aspects the AFSJ agencies' data protection. Therefore, the parliamentary scrutiny could still be improved.

4.3.4 Parliamentary scrutiny of the EU intelligence bodies' activities

In the previous sections, several specific questions related to the NPs' and EP's parliamentary oversight of the EU intelligence bodies were assessed. However, it has not yet been examined whether the EP has the authority and will to engage in continuous and in-depth oversight of the EU intelligence bodies' *activities* in order to ensure that they act according to the limits of their mandates, pursue the public will and ultimately produce products that meet the standard of good intelligence. Hence, it remains to outline the EP's scrutiny of each of the bodies in detail.

The CFSP intelligence bodies' scrutiny

As was outlined above, the EP's access to classified data is in the realm of CFSP very limited. Hence, it can be expected that its capabilities to oversee the activities of the CFSP intelligence bodies are also rather restricted.

In SatCen's mandate, the EP is mentioned only once, in the statement that the Council forwards SatCen's annual report to the EP.²⁸⁵ Other than that, there is no legal basis for the

²⁸⁴ Ibid, p.63.

²⁸⁵ COUNCIL OF THE EUROPEAN UNION (2011d): ' Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre amended by Joint Action 2006/998/CFSP, Joint Action

EP to oversee SatCen's activities. Still, SEDE states that it "pays attention" to SatCen and has (instead of AFET) the right to receive SatCen's Director for questioning on his lead of SatCen.²⁸⁶ However, SEDE does not seem to use this right to engage in thoroughly overseeing SatCen's activities: according to SEDE's documents, SatCen was discussed only in 2005, 2008, and 2010 and thus seems to have raised interest only at very distant intervals.²⁸⁷ Accordingly, SEDE provides *ad hoc* rather than continuous scrutiny of SatCen's activities. Additionally, one can find a PowerPoint Presentation from 2010 in which SatCen's Director explains to SEDE the general tasks, funding and functions of SatCen at utmost basic level and in very general terms.²⁸⁸ However, if SEDE needed to be provided with such basic information about SatCen when it had already been an official EU organ for nine years, SEDE's members hardly seem to have the expertise necessary to conduct in-depth oversight or pose critical questions about its activities.

IntDir's oversight by the EP is apparently equally weak, as the EP is not mentioned even once in its legal framework. Additionally, while SEDE states that it has "established contacts and visits [to] ... the EU Military Staff" and is responsible for receiving the EUMS's Director, it is rather doubtful that SEDE focuses during these visits on IntDir's activities in particular.²⁸⁹ Apart from this, SEDE oversees the *EU Military Committee* which issues operational guidance to the EUMS.²⁹⁰ However, no documentation whatsoever was found that would indicate

2009/834/CFSP and Council Decision 2011/297/CFSP'. Statute of the Satellite Centre as published on its webpage, 25 August 2011, Article 8, p.3.

²⁸⁶ EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE (2009a): *infokit* of September 2009. Info-sheet number 6.

²⁸⁷ EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE (2009b): 'Reports on Activities 2004-2009', p.29.

²⁸⁸ EUROPEAN UNION SATELLITE CENTRE PRESENTATION: Director of SatCen, Tomaž Lovrenčič, presentation to the European Parliament Subcommittee on Security and Defence, 18 March 2010.

²⁸⁹ EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE (2009a): *infokit*, info-sheet number 6.

²⁹⁰ EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE (2009b): 'Reports on Activities 2004-2009', p.10.

that the EP thereby indirectly oversees IntDir's intelligence activities. Thus, overall, IntDir seems not to be subject to the EP's in-depth and regular parliamentary scrutiny.

Finally, due to the lack of a legal framework for IntCen, the EP has no treaty-based mandate whatsoever to oversee its activities. Because of this, unlike SatCen and IntDir, SEDE cannot summon IntCen's Director for questioning on his conduct of IntCen, and does not mention IntCen at all when describing its activities.²⁹¹ Thus, IntCen seems to be completely outside of the EP's oversight scope. However, while the possibilities for parliamentary oversight of IntCen are indeed very limited, the EP is apparently also not willing to engage in its oversight: thus, instead of using the indirect possibility for scrutinising IntCen via the control of the EEAS, "neither of these committees [SEDE and AFET] has taken a clear interest in overseeing the work" of IntCen and "there is very limited awareness within the EP about the general mandate and powers of [IntCen], let alone more specific information".²⁹² These quotations make the EP's lack of expertise for overseeing IntCen sufficiently clear. In addition, IntCen apparently actively opposes itself to being scrutinised by the EP. For example, IntCen's representative reminded the national delegations in a Council meeting that reference should not be made to IntCen in the public versions of the meeting agenda – a practice which further hampers IntCen's already very limited transparency.²⁹³ Equally, the statement of IntCen's Director that "there is no need for parliamentary scrutiny of [IntCen]" clearly out-

²⁹¹ **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.73f and 168; **EUROPEAN PARLIAMENT SUBCOMMITTEE ON SECURITY AND DEFENCE** (2009a): *infokit*, info-sheet number 6.

²⁹² **WILLS, VERMEULEN, BORN, SCHEININ, WIEBUSCH** (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.67 and 81.

²⁹³ In result to an amendment of the European Freedom of Information Act in 2000, documents classified Top Secret, Secret or Confidential UE are exempted from public access, equally documents which would allow to draw conclusions on the content of classified documents, and publicly available documents are not allowed to contain references to those classified documents. **COUNCIL OF THE EUROPEAN UNION** (2000): 'Council Decision amending Decision 93/731/EC on public access to Council documents and Decision 2000/23/EC on the improvement of information on the Council's legislative activities and the public register of Council documents'. Council Decision 2000/527/EC, 14 August 2000, Articles 1(1), 1(2) and 2.

lines its defiance of being parliamentary overseen.²⁹⁴ This opposition, together with the lack of authority and will by the EP, provide IntCen *de facto* with absolute absence from undergoing any parliamentary scrutiny of its activities.²⁹⁵

To conclude, the EP is not provided with the necessary legal authority to continuously and in-depth oversee the intelligence activities of the CFSP bodies, and additionally lacks the will to do so. Consequently, there does not exist any effective parliamentary oversight of the CFSP intelligence bodies.

The AFSJ intelligence bodies' scrutiny

In contrast to CFSP, the EP is co-responsible in the AFSJ legislative procedure. As outlined above, it consequently has much better access to information on the AFSJ agencies' intelligence activities.²⁹⁶

Beginning with Europol, LIBE has the right to summon Europol's Director and Management Board for questioning, and can also summon the Council with regard to its lead of Europol.²⁹⁷ Furthermore, LIBE is extensively provided with information on Europol's activities, for example during its visits to Europol's premises or included in Europol's budget plans, annual working programmes, reports on its activities, and the biannual reports of the JSB.²⁹⁸ LIBE is thus provided with the necessary legal authority to engage in thorough, continuous oversight of Europol's activities. However, it is apparently not willing to strictly enforce its

²⁹⁴ **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; **RETTMAN**, Andrew (2010c): 'Ashton picks Finn to be EU "spymaster"' in *EU Observer*, 17 December 2010.

²⁹⁵ **RETTMAN**, Andrew (2011e): 'EU intelligence bureau sent officers to Libya' in *EU Observer*, 12 April 2011; **RETTMAN**, Andrew (2010c): 'Ashton picks Finn to be EU "spymaster"' in *EU Observer*, 17 December 2010.

²⁹⁶ **HILLEBRAND** (2011): 'Guarding EU-wide counter-terrorism policing', p.508f; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.74.

²⁹⁷ **COUNCIL OF THE EUROPEAN UNION** (2009): 'Council Decision ... establishing the European Police Office (Europol)', Article 48.

²⁹⁸ *Ibid.* Articles 37(10) and 11; **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.75.

capabilities: as mentioned above, the EP does not seek to consult the JSB on its insights, and the members of LIBE were criticised for being too "ill-prepared to ask pertinent questions" when meeting with Europol's Director.²⁹⁹ Overall, the EP thus does not oversee Europol as thoroughly as it possibly could.

Quite similarly, the EP is entitled to strong oversight capabilities on Frontex, receives all its annual reports, working programmes, and budgetary plans, and may invite Frontex's Director to question him "on the carrying out of his/her tasks".³⁰⁰ However, when scrutinising LIBE's documents, it seems that it does practically not engage in overseeing Frontex's intelligence functions in particular. Therefore, the EP's oversight is again weaker than its legal authority would suggest.

To conclude, while the EP's oversight of the AFSJ agencies could be considerably better than that of the CFSP intelligence bodies as it is provided with the necessary legal authorities, LIBE's identified lack of interest in focusing on its intelligence functions ultimately weakens its parliamentary intelligence oversight. Accordingly, the parliamentary scrutiny of the AFSJ agencies does in practice not meet its theoretical good standard.

²⁹⁹ Ibid, p. 63 and 75.

³⁰⁰ **EUROPEAN PARLIAMENT AND COUNCIL** (2011): 'Regulation ... establishing [Frontex]', 22 November 2011, L 204/14, Articles 1(19) and 1(25); **COUNCIL OF THE EUROPEAN UNION** (2004): 'Council Regulation...', *Frontex Regulation*, Article 21(c).

4.4 Conclusion on the parliamentary oversight of the EU intelligence bodies

The second part of this work has attempted to assess whether the parliamentary oversight of the EU intelligence system is indeed, as argued by IntCen's Director, sufficient and thus needs no further improvement. Towards this aim, the different provisions of the NPs' and EP's oversight currently in place were outlined in order to examine them for flaws and weaknesses.

By doing so, a multitude of flaws were identified that prevent both the NPs and EP from engaging in effectively overseeing the EU intelligence bodies' mandates, budgets, data protection activities, and general activities.³⁰¹ Hence, the argument of IntCen's Director is clearly unwarranted. Instead, it was shown that the parliamentary oversight of the EU intelligence system needs to be improved in order to meet the international norm according to which, nowadays, all intelligence bodies should be subject to adequate oversight and be held democratically accountable.³⁰²

However, it became clear that one has to distinguish between the CFSP and AFSJ intelligence bodies' oversight. Thus, while the EP has *de facto* no access whatsoever to classified information in the realm of CFSP (with the exception of the Special Committee, whose capabilities are, however, too limited to allow for thorough intelligence oversight), its data access is much less problematic in the realm of AFSJ. Also, while the EP now has the ability to influence the mandates of the AFSJ agencies, the Council alone determines the tasks and responsibilities of the CFSP intelligence bodies. Finally, the amount of public money provided

³⁰¹ **BORN**, JOHNSON (2005): 'Balancing operational efficiency', p.235.

³⁰² **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.41; **WETZLING** (2006): 'Concerted high politics in the absence of angels?', p.3.

to the CFSP intelligence bodies as well as its efficient use is *de facto* not overseen by the parliaments, whereas the EP has legally the full control on the AFSJ bodies' budget.

To sum up, while the parliamentary oversight of the AFSJ intelligence bodies, especially the one provided by the EP, is generally fairly good – despite some identified flaws like the lack of engagement by the parliamentary members – the parliamentary oversight of the CFSP intelligence bodies is virtually absent in major areas.³⁰³ This means that their legitimacy and democratic accountability is equally very weak. In other words, neither the NPs nor the EP can effectively ensure that the CFSP intelligence bodies act in accordance with the public will, as they lack the ability, authority and on many questions also the will to engage in effective intelligence oversight.³⁰⁴

³⁰³ **RIPOLL-SERVENT** (2010): 'Point of no return? The European Parliament after Lisbon', **WILLS**, VERMEULEN, BORN, SCHEININ, WIEBUSCH (2011): 'Parliamentary oversight of security and intelligence agencies in the European Union', p.81.

³⁰⁴ **MÜLLER-WILLE** (2006a): 'Improving the democratic accountability of EU intelligence', p.125.

5 Conclusion

This work aimed to answer two questions: firstly, whether the EU does or does not use its own intelligence capabilities, and secondly, if so, whether they are subject to sufficient parliamentary oversight.

To answer the first question, the first part of this work started by proposing a definition of intelligence. According to this definition, the term 'intelligence' was used in this work to refer to security-related information tailored to the specific needs of a decision-maker. Hence, each formal EU body in theory was able to qualify as an 'intelligence body' if it engaged in the production of intelligence via the intelligence activities of collection, processing, analysis, and dissemination. Thereby, collection was argued to be performed even if the body did not engage in the collection of secret information using special powers.

This definition was then used to outline the argument that currently, five EU bodies qualify as intelligence bodies: SatCen, IntDir and IntCen in the realm of CFSP, and Europol and Frontex in AFSJ. On this basis, it was concluded that the EU disposes of an emerging intelligence system as its intelligence bodies increasingly form a unit that supports EU decision-making with intelligence.

This insight led to the second part of this work which focused on the parliamentary oversight of the EU intelligence system. Again, it was first necessary to elaborate a definition of the concepts of oversight and democratic accountability. On this basis, the NPs' and EP's capabilities to effectively oversee the EU intelligence bodies were examined, paying particular attention to their resources and access to classified information, their influence on the bodies' mandates and budgets, and their oversight of the data protection regulations and general activities of the EU intelligence bodies. Thereby, several flaws were identified that

hampered the NPs' and EP's parliamentary oversight, predominantly their lack of ability, authority and will to engage in oversight. However, it was found that, while the AFSJ intelligence bodies are generally quite adequately overseen, the CFSP bodies are *de facto* "accountable neither to national parliaments nor the EP".³⁰⁵ Accordingly, the second question was answered with the argument that the EU intelligence system is not sufficiently overseen, but needs to be improved in its parliamentary oversight.

The finding of considerable flaws in the democratic accountability, especially of the CFSP intelligence bodies, is particularly concerning as they are so obviously in contrast to the EU's official commitment "to democracy, accountability and transparency".³⁰⁶ Thus, while the European Council recalls in the Stockholm programme that the "transparency ..., access to documents and good administration" of the EU institutions are necessary preconditions for a good democratic standard, the EU's intelligence bodies clearly do not live up to this ideal.³⁰⁷ It rather seems that, while the EU has considerably increased its intelligence capabilities, it has, in the realm of CFSP, engaged far less in improving the provisions for effective parliamentary control.³⁰⁸ Hence, the EU's credibility in the international arena is clearly undermined when requesting security-sector reforms in order to improve transparency and democratic accountability, as it itself does not enforce these standards with regard to its own intelligence bodies.

³⁰⁵ MÜLLER-WILLE (2006a): 'Improving the democratic accountability of EU intelligence', p.125.

³⁰⁶ HILLEBRAND (2011): 'Guarding EU-wide counter-terrorism policing', p.501.

³⁰⁷ THE STOCKHOLM PROGRAMME (2010): 'An open and secure Europe', paragraph 2.6.

³⁰⁸ WETZLING (2006): 'Concerted high politics in the absence of angels?', p.1.

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The word length of this dissertation is fourteen thousand six hundred and thirty (14,630).

DECLARATION

This work has not previously been accepted in substance for any degree and is not being concurrently submitted in candidature for any other degree.

Signed (candidate)

Date

STATEMENT I

This work is the result of my own investigations, except where otherwise stated. Where correction services have been used, the extent and nature of the correction is clearly marked in a footnote. Other sources are acknowledged by endnotes giving explicit references. A bibliography is appended.

Signed (candidate)

Date

STATEMENT II

I hereby give consent for my work, if accepted, to be available for photocopying and for inter-library loan, and for the title and summary to be made available to outside organizations.

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Date